SUPREME COURT OF THE UNITED STATES.

No. 324.

THE SAINT PAUL AND PACIFIC RAILROAD COMPANY, APPELLANT,

vs.

GEORGE D. HUMPHREYS, LUCIUS H. TERRY, AND MOSES M. BROADWELL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

INDEX.

	Original.	Print.
Bill of complaint	1	1
Interrogatories	11	5
Subpœna	17	8
Demurrer	20	9
Deposition of Edmund Rice	21	10
Argument of cause	23	10
Decision and order	24	11
Answer to bill of complaint	24	11
Replication	70	30
Decree	74	32
Map	76	33
Stipulation of counsel	77	33
Map	84	36
Patent	85	37
Map	86	37
Citation	89	38

1 UNITED STATES OF AMERICA, *District of Minnesota, ss:*

GEORGE D. HUMPHREYS, LUCIUS H. TERRY, and MOSES M. Broadwell,
vs.
THE SAINT PAUL AND PACIFIC RAILROAD Company.

Pleas before the honorable the judges of the circuit court of the United States of America for the district of Minnesota of the June term of said court, held at Saint Paul in said district, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States the ninetieth year.

DISTRICT OF MINNESOTA, *ss:*

Be it remembered, that on the twelfth day of January, in the year of our Lord one thousand eight hundred and sixty-three, George D. Humphreys, Lucius H. Terry, and Moses M. Bradwell, above named, by Lorenzo Allis, their solicitor, and of counsel, filed in the clerk's office of said court their bill of complaint in the words and figures following, viz:

To the honorable the judges of the circuit court of the United
2 States for the district of Minnesota, sitting in equity:

George D. Humphreys, Lucius H. Terry, and Moses M. Broadwel', of the city of Saint Louis, in the State of Missouri, and citizens of the State of Missouri, bring this their bill against the Saint Paul and Pacific Railroad Company, a corporation created and existing by the laws of the State of Minnesota, and dwelling and doing business in said State, and the corporators whereof are citizens of said State of Minnesota.

And thereupon your orators complain and say, that they are now and for a long time heretofore, to wit, for about a year last past, have been the owners and well seized in fee and in the actual possession and enjoyment of the following described lands and real estate, together with its appurtenances, situate in the county of Ramsey, and State of Minnesata, to wit: The east half of lot ten, (10,) and the south twenty (20) feet of the east half of lot three, (3,) in block twenty-nine, (29,) in the original town of St. Paul, according to the plat thereof on record in the office of the register of deeds for the county of Ramsey aforesaid, the same lying and being in the present city of St. Paul, and having a front of twenty-five (25) on the
3 levee between Waconta and Sibley streets, with a depth of about one hundred and seventy feet, and that on said ground there is a stone warehouse, and that said premises are of great value, to wit, of the value of six thousand dollars.

And your orator further says, that immediately in front of your orator's said premises, and about one hundred feet distant therefrom, flows the Mississippi river, a deep and navigable stream of water, on which a large amount of valuable commerce, trade, and navigation

are carried on between the port of the said city of St. Paul and other ports and places situate on the said river and its tributaries. And that the said river immediately in front of said premises, and for a short distance above and below the same, is deep and navigable, quite up to and along the banks and shores of said river; and that the said banks and shores of said river, in front of said premises, and for a short distance above and below the same, are well adapted and peculiarly favorable for the landing and moving of the steamboats and other vessels engaged in the commerce, trade, and navigation aforesaid, and for receiving and discharging their freight and passengers, and for all other purposes connected with their business; and

4 that the banks and shores aforesaid, immediately in front of said premises and for a short distance above and below the same, have been used from the earliest times, and are now used for the purposes aforesaid, that is to say, as a public landing for steamboats and other water craft navigating said river and its tributaries.

And that the said banks and shores from the easterly line of Wacata street, below said premises, to the westerly line of Jackson street, above said premises, a distance of about eight hundred feet, were, about five years ago, carefully and at great expense graded and prepared by the city of St. Paul, to facilitate and aid their use as a public landing aforesaid, and have ever since been and are now maintained by said city as such public landing.

And that the same is the usual and ordinary public landing at the port of said city of St. Paul, and that its free and unobstructed use as such public landing is indispensable to the public and your orators; and that no other portion or portions of the banks and shores of said river within the limits of said city of St. Paul present equal facilities and advantages as a public landing, and that all other portions of said banks and shores within the limits aforesaid are comparatively little used as such public landing.

5 And your orators further say, that the interests and necessities of the public and of the commerce and trade at the port of the said city of St. Paul indispensably require the free and unobstructed use of the whole space lying between the front line of your orator's said premises, and the said line extended westerly to the westerly line of Jackson street, and easterly to the easterly line of Waconta street, and the said Mississippi river, the said space being about one hundred feet wide, for the purposes of a public landing aforesaid, and also for the purposes of a public street, and that the said entire space has, from the earliest times, been used and is now used as such public landing and public street.

And that many years ago, to wit, A. D. 1849, the same was duly dedicated by the original proprietors thereof, and of the adjacent lands, to the public, to be used as a public landing and public street aforesaid, and has ever since been maintained, first, by the town of St. Paul, and afterwards by the city of St. Paul, and is now maintained by said city as a public landing and public street aforesaid.

And your orators further say, that there are three and only three pub-

lic streets, to wit: Waconta, Sibley, and Jackson streets, leading
from the other portions of said city of St. Paul and the ad-
6 jacent country to the public landing and street aforesaid, and
communicating therewith; and that the said three public streets furnish the only practicable communications with and means of ingress, egress to and from said public landing and street: and that the said three public streets were, many years ago, to wit, about A. D. 1849, duly dedicated by the original proprietors thereof, and of the adjacent lands, to the public to be used as public streets aforesaid, and for many years past have been and are now maintained by the city of St. Paul, and used by the public as public streets aforesaid. And that the free and unobstructed use of the said three public streets, to wit: Waconta, Sibley, and Jackson streets, especially in their communications with the aforesaid public landing and street, is indispensable to your orators and to the public generally.

And your orators further say, that they are now, and for about a year last past have been, the owners, and well seized in fee of all that parcel of land lying and being immediately in front of the premises aforesaid, and extending from the said front line of said premises to the said river, and being of the same width as the front line aforesaid of said premises, subject however to the public easements aforesaid.

And your orators further say, that the said defendant is a
7 body corporate, created and established by the laws of the
State of Minnesota, and existing and doing business in said State under and by virtue of said laws. And that the said defendant, without any law or color of law, or right or color of right, or authority whatever therefor, and without any license therefor from your orators, or from any other person or persons, party or parties whomsoever, and notwithstanding the repeated and earnest remonstrances and objections of your orators duly urged against the same to the said defendant, hath nevertheless forcibly and wrongfully entered upon and taken permanent and exclusive possession of the aforesaid public landing and public street in front of your orator's said premises; and of all that portion of said public landing and public street lying between the said easterly line of said Waconta street and the easterly line of said Sibley street, and doth now hold the same, and hath erected and constructed thereupon a railroad for the conveyance and transportation of passengers and freight for hire, and hath for some time past been, and is now, running daily and regular trains of cars thereupon, and transporting passengers and freight thereupon for hire. And that in the erection and construction of the
said railroad as aforesaid the said defendant hath erected and
8 constructed a trestle-work in and upon said public landing and
street, and hath erected an embankment of earth under and on each side of said trestle-work, and of equal elevation therewith, upon which said trestle work the track of said railroad hath been laid; and that said trestle-work and embankment are raised about six feet above the surface of said public street and landing, as the same have been graded and established by the said city of St. Paul as aforesaid, and are about forty feet wide, and occupy about the middle portion of the

aforesaid public street and landing, extending from the said easterly line of Waconta street to the said easterly line of Sibley street.

And that the said defendant, by reason of the entrance upon and possession and occupancy of the said public street and landing as aforesaid, and by reason of the erections and constructions aforesaid, and the running of the cars upon said railroad as aforesaid, and the carriage and transportation of passengers thereupon as aforesaid, hath permanently impeded and obstructed, and will continue permanently to impede and obstruct, the aforesaid public street and landing, and hath prevented, and will continue permanently to prevent, the free use of said public street and landing by your orators and by the public generally, and hath rendered, and will continue perpetually
9 to render, the said public street and landing nearly or quite useless and impracticable as a public street and landing, and hath wholly cut off, and will continue wholly to cut off, the communication and connection of Waconta street aforesaid with the public landing aforesaid.

And your orators further say, that by the aforesaid acts and doings of the said defendant, the aforesaid premises of your orators have been and will continue to be greatly depreciated in value and utility, and that their value hath been and will continue to be thereby reduced to less than one-third of the sum which they would be worth if the aforesaid obstructions were removed from the said public street and landing. And that the value of the said premises depends almost entirely upon the frontage thereof on said public street and landing as aforesaid, and the continued and perpetual maintenance and free and unobstructed use of said public street and landing as a public street and landing. And that without such frontage and such maintenance and use of said public street and landing, the said premises would be of very little value.

And your orators further say, that they have requested the said defendant to remove all and singular the aforesaid obstructions from the said public street and landing, and to yield possession
10 thereof, and to refrain altogether from using or occupying or holding said public street and landing, or any part thereof, as aforesaid; but that, nevertheless, the said defendant hath absolutely refused, and doth now absolutely refuse, to comply in anywise or degree with your orators' request aforesaid.

And your orators further say, that they are without remedy or law in the premises, and that unless the said defendant, by writ of injunction issued out of this court, be required to remove all and singular the obstructions aforesaid from said public street and landing, and be forever restrained from entering upon or holding the said public street or landing, or any part thereof, or from maintaining thereupon a railroad or running cars or carrying or transporting passengers and freight thereupon, or from obstructing, impeding, or interfering in anywise with the free use of the said public street or landing, or either or any part thereof by the public or by your orators, they will be irreparably injured.

To the end, therefore, that the said defendant may, if it can, show

why your orators should not have relief hereby prayed, and may, under its corporate seal and according to the best and utmost of its knowledge, remembrance, information, and belief, and according to the best and utmost of the knowledge, remembrance, information, and belief of its officers, directors, and agents, full, true, direct, and perfect answer make to all and singular the matters hereinbefore stated, and to each of the several interrogatories hereinafter numbered and set forth, that is to say:

1. Whether these orators are not now, and have not been for about one year last past, the owners and well seized in fee and in the actual possession and enjoyment of the aforesaid land and real estate, together with its appurtenances, as hereinbefore stated, or how otherwise?

2. Whether said premises are not of the value of six thousand dollars, as above stated, or of what value are said premises?

3. Whether the Mississippi river does not flow in front of said premises and about one hundred feet distant therefrom, as above stated, or how otherwise?

4. Whether the said river in front of said premises, and for a short distance above and below the same, is not deep and navigable quite up to its banks, as above stated, or how otherwise?

5. Whether said banks in front of said premises, and for a short distance above and below the same, are not well adapted for the landing and moving of steamboats and other vessels engaged in the commerce, trade, and navigation of said river, and for receiving and discharging their freight and passengers, and have not been from the earliest times, and are not now used for said purposes and for a public landing, as above stated, or how otherwise?

6. Whether said banks and shores from easterly line of said Waconta street to the westerly line of said Jackson street, a distance of about eight hundred feet, were not about five years ago carefully and at great expense graded and prepared by the city of St. Paul to facilitate and aid their use as a public landing, and have not since been and are not now maintained by said city as such public landing, as hereinbefore stated, or how otherwise?

7. Whether the same is not the usual and ordinary public landing at the port of said city of St. Paul; and whether its free and unobstructed use as a public landing is not indispensable to the public and to your orators, as above stated, or how otherwise?

8. Whether any other portion or portions of the banks and shores of said river within the limits of said city of St. Paul present equal facilities and advantages as a public landing; and whether all other portions of said banks within said limits are not comparatively little used as a public landing, as above stated, or how otherwise?

9. Whether the interests and necessities of the public and of the commerce and trade at the port of the said city of St. Paul do not indispensably require the free and unobstructed use of the whole space lying between the front line of said premises, and the said line extended westerly to the westerly line of Jackson street and

13 easterly to the easterly line of Waconta street and the said Mississippi river for the purposes of a public landing, and also for the purposes of a public street; and whether the said entire space has not been from the earliest times used, and is not now used, as a public landing and public street, as above stated, or how otherwise ?

10. Whether the same was not many years ago, to wit, about the the year 1849, duly dedicated by the original proprietors thereof, and of the adjacent lands, to the public, to be used as a public landing and public street, and has not ever since been maintained, first, by the town of St. Paul and afterwards by the city of St. Paul, and is not now maintained by said city as a public landing and public street, as above stated, or how otherwise ?

11. Whether there are not three public streets and only three public streets, viz: Waconta, Sibley, and Jackson streets, leading from the other portions of said city of St. Paul and the adjacent country to the public street and landing above mentioned and communicating therewith; and whether the said three public streets do not furnish the only practicable communications with the said public street and landing, as above stated, or how otherwise ?

12. Whether the said three public streets were not many years ago, to wit. about A. D. 1849, duly dedicated to the public to be used as public streets. and have not been for many years past and are now maintained by the city of St. Paul and used by the pub-
14 lic as public streets, as above stated, or how otherwise ?

13. Whether the free and unobstructed use of the said three public streets, especially in their communications with the aforesaid public landing and street, is not indispensable to these orators and to the public generally, as above stated, or how otherwise ?

14. Whether these orators have not now, and have not been for about a year last past, the owners and well seized in fee of all that parcel of land lying immediately in front of the premises aforesaid and extending to the said river, subject, however, to the public easements aforesaid, as above stated. or how otherwise?

15. Whether the said defendant is a body corporate, as above stated, or how otherwise?

16. Whether the said defendant hath not forcibly and wrongfully entered upon and taken permanent and exclusive possession of the aforesaid public landing and public street in front of the premises aforesaid, and all that portion of said public landing and public street lying between the said easterly line of said Waconta street and the easterly line of said Sibley street, and doth not now hold the same and hath not erected and constructed thereupon, a railroad for the conveyance and transportation of passengers and freight for hire, and hath not for some time past been, and is not now running,
15 daily and regular trains of cars thereupon and carrying and transporting passengers and freight thereupon for hire, as above stated, or how otherwise?

17. Whether, in the erection and construction of the said railroad, the said defendant hath not erected and constructed a trestle-work in and upon said public street and landing, and hath not erected an

embankment of earth under and on each side of said trestle-work, and of equal elevation therewith, upon which the track of said railroad hath been laid; and whether the said trestle-work and embankment are not raised about six feet above the surface of said public street and landing, and are not about forty feet wide, and occupy about the middle portion of said public street and landing, extending from the said easterly line of Waconta street to the said easterly line of Sibley street, as above stated, or how otherwise?

18. Whether the said defendant hath not refused and doth not now refuse to remove said obstructions from said street and landing; and whether said defendant doth not persist in using and occupying said public street and landing, as above stated, or how otherwise?

And that the said defendant, its president, directors, officers, agents, attorneys, and servants, and each and every of them, by a writ of injunction issued out of, and under the seal of this court, may be forever restrained from entering upon, possessing, occupying, or holding the aforesaid public street or landing, or any part thereof, or from erecting or constructing any railroad or trestle-work or embankment or railway track thereupon, or from running any cars thereupon, or from in anywise impeading, obstructing, or interfering with the free use of said public street and public landing, and every part and portion thereof, by the public or by your orators; and may be directed and required to remove absolutely and entirely from the aforesaid public street and landing and every part and portion thereof, the aforesaid embankment, trestle-work, railway track, and railroad, and every part and portion thereof, and all and singular the aforesaid obstructions and impediments, and to restore the said public street and landing, and every part and portion thereof, in all respects in as good condition as the same were before the injuries and acts herein complained of.

16

And that pending this suit, and until the final determination thereof, the said defendant, its president, directors, officers, agents, attorneys, and servants, and each and every of them, may be restrained in all respects as aforesaid by a preliminary injunction issued out of, and under the seal of this court.

And that your orators may have such other and further relief in the premises as the nature of the case may require and as may be agreeable to equity.

17

May it please your honors to grant unto your orators the writ of subpœna of the United States of America issued out of, and under the seal of this court, to be directed to the said defendant, the Saint Paul and Pacific Railroad Company, commanding the said defendant, at a certain day, and under a certain penalty therein to be specified, personally to be and appear before your honors in this court, and then and there to answer to all and singular the premises, and to stand and abide such order and decree therein as to your honors shall seem meet.

And your orators shall ever pray, &c.

LORENZO ALLIS,
Solicitor and of Counsel for Plaintiffs.

And thereupon, upon application of said solicitor, a writ of subpœna was duly issued out of said court, duly tested, signed by the clerk thereof, under the seal of said court, and in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Minnesota, ss:

The United States of America to the Saint Paul and Pacific Railroad Company, greeting:

We command you, and every of you, that you appear before
18 our judges of our circuit court of the United States of America, for the district of Minnesoto, at St. Paul, in said district, on the first Monday in the month of February next, to answer the bill of complaint of George D. Humphreys, Lucius H. Terry, and Moses M. Broadwell, this day filed in the clerk's office of said court, in said city of St. Paul, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of Minnesota to execute.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at St. Paul aforesaid, this twelfth day of January, in the year of our Lord one thousand eight hundred and sixty-three, and of our independence the eighty-seventh year.

[SEAL.]

H. E. MANN, *Clerk.*
By J. N. CARDOZE, *Deputy.*

50-cent rev. stamp cancelled.

Memorandum.

The within-named defendants are notified that unless they enter their appearance in the clerk's office of said court, at St. Paul aforesaid, on or before the day to which the within writ is returnable, the complaint will be taken against them as confessed and a decree entered accordingly.

LORENZO ALLIS, *Pl'ff Sol'r.*

19 Which subpœna was afterwards duly returned to our said clerk's office indorsed by the marshal of the United States for the district of Minnesota, as follows, viz:

DISTRICT OF MINNESOTA, *ss:*

I hereby certify that I served the within subpœna in chancery, on the within-named the Saint Paul and Pacific Railroad Company, by delivering a certified copy hereof to Edmund Rice, president of said company, personally, at St. Paul in said district, Jan'y 12th, 1863.

Service	$2 00
Travel	1 00
	3 00

CHAS. EATON, *U. S. Marshal.*

And afterwards, to wit, at rules held at the clerk's office of said court, on the 30th day of January, in the year of our Lord one thousand eight hundred and sixty-three, the following proceeding, among others, was had, viz:

HUMPHREYS, TERRY & CO.
vs.
THE SAINT PAUL AND PACIFIC RAILROAD COMPANY. } In chancery.

And now comes the defendant, by Masterson and Simons, its attorneys, on whose motion ordered that the appearance of the defendant be, and it is hereby, entered.

And afterwards, to wit, on the tenth day of March, in the
20 year of our Lord one thousand eight hundred and sixty-three, came the said defendant, and filed in the clerk's office of said court its demurrer to the plaintiffs' bill of complaint, in the words and figures following, to wit:

Circuit court of the United States for the district of Minnesota.

GEORGE D. HUMPHREYS, LUCIUS H. TERRY, and MOSES M. BROADWELL,
vs.
THE SAINT PAUL AND PACIFIC RAILROAD COMPANY.

The demurrer of the Saint Paul and Pacific Railroad Company, defendant, to the bill of complaint of George D. Humphreys, Lucius H. Terry, and Moses M. Broadwell, complainants.

This defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said complainants' bill to be true in manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth:

That the said bill of complaint does not set forth or contain any facts or matter sufficient in law or equity to constitute a cause of action, or to entitle the said complainants to the relief prayed for in their said bill, or any relief whatever, or any interposition of this court; because it appears from the said bill that the acts,
21 doings, matters, and things in said bill complained of, were and are a lawful and rightful exercise of the rights, authority, duties, and trusts granted to, and conferred and imposed in and upon this defendant by the laws of the United States and the laws and public acts of the State of Minnesota in the premises.

Wherefore this defendant demands the judgment of this honorable court, whether it shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained, and prays to be hence dismissed with its reasonable costs and disbursements in this behalf sustained.

MASTERSON & SIMONS,
Solicitors for Defendant.

I hereby certify that I have examined the foregoing demurrer, and that, in my opinion, it is well founded in point of law.

H. F. MASTERSON, *Counsel.*

UNITED STATES OF AMERICA, *District of Minnesota, ss:*

Edmund Rice, of said district, being duly sworn, deposes and says that he is the president of the Saint Paul and Pacific Railroad Company, a corporation duly created and organized by and under the laws of the State of Minnesota, the defendant named in the
22 foregoing demurrer, and that the said demurrer is not interposed for delay.

EDMUND RICE.

Subscribed and sworn to before me, at St. Paul, in said district, this 10th day of March, 1863.

JAMES W. TAYLOR,
U. S. Commissioner.

And afterwards, to wit, at rules held at the clerk's office of said court, on the 6th day of April, in the year of our Lord one thousand eight hundred and sixty-three, the following proceeding, among others, was had, to wit:

GEORGE D. HUMPHREYS, LUCIUS H. TERRY, and MOSES M. Broadwell,
vs.
THE SAINT PAUL AND PACIFIC RILROAD COMpany. } In chancery.

And now come the plaintiffs, by Lorenzo Allis, their solicitor, on whose motion it is ordered that this cause be, and the same is hereby, set down for argument.

And afterwards, to wit, at a general term of said court, begun and held at the city of St. Paul, in said district, on the third Monday, being the fifteenth day of June, in the year of our Lord one
23 thousand eight hundred and sixty-three, on the fourteenth day of said term, the following proceeding, among others, was had, viz:

GEORGE D. HUMPHREYS *et al.*
vs.
THE SAINT PAUL AND PACIFIC RAILROAD COMpany. } In chancery.

This cause this day came on to be heard, whereupon Hon. R. R. Nelson, being a party interested, vacated his seat on the bench. Argument of the cause was commenced, pending which: Ordered that the court stand adjourned until Wednesday morning, July first, 1863, at 9 o'clock.

And on the fifteenth day of said term the following proceeding, among others, was had, viz:

GEORGE D. HUMPHREYS *et al.*
vs.
THE SAINT PAUL AND PACIFIC RAILROAD COMPANY. } In chancery.

This cause this day came on to be further heard, and the argument of counsel was concluded, and the cause submitted to the court, and by the court held under advisement.

And afterwards, to wit, at rules held at the clerk's office of said
24 court, on the fourth day of April, in the year of our Lord one thousand eight hundred and sixty-four, the decision and order of the court, by his honor Judge Miller, was filed in the clerk's office of said court, and entered in said cause; which decision and order is in the words and figures following, viz:

In circuit court for the district of Minnesota.

GEORGE D. HUMPHREYS, LUCIUS H. TERRY, and Moses M. Broadwell,
vs.
THE SAINT PAUL AND PACIFIC RAILROAD Company.

The court, being fully advised, overrules the demurrer of the defendant to the bill of the complainants, and the defendant is required to answer the bill by the next rule day.

SAMUEL F. MILLER, *Judge*.

And afterwards, to wit, on the second day of May, in the year of our Lord one thousand eight hundred and sixty-four, came the said defendant, by his said solicitors, and filed its answer to the plaintiff's bill of complaint, in the clerk's office of said court, in the words and figures following, to wit:

Circuit court of the United States for the district of Minnesota, sitting in equity.

25 The answer of the Saint Paul and Pacific Railroad Company, a corporation created and existing by the laws of the State of Minnesota, and dwelling and doing business in said State, and the corporators whereof are citizens of said State of Minnesota, defendant to the bill of complaint of George D. Humphreys, Lucius H. Terry, and Moses M. Broadwell, complainants:

This defendant, now and at all times hereafter reserving all manner of benefit and advantage to itself of exception to the many errors and insufficiencies in said bill contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is material for it to make answer unto, it does, according to the best

and utmost of its knowledge, remembrance, information, and belief, and according to the best and utmost of the knowledge, remembrance, information, and belief of its officers, directors, and agents, answer and say as follows:

Said defendant denies that said complainants now are, or ever have been, the owners, or seized in fee simple or otherwise, or that they are now, or ever have been, in the lawful possession or enjoyment of the whole of the lands and real estate, with its appurtenances, situated in the county of Ramsey, and State of Minnesota, and set forth and described in said bill as follows, to wit:

The east half of lot ten, (10,) and the south twenty (20)
26 feet of the east half of lot three, (3,) in block twenty-nine, (29,)
in the original town of Saint Paul, according to the plat thereof on record in the office of the register of deeds for the said county of Ramsey, the same lying and being in the present city of St. Paul, and having a front of twenty-five feet on the levee between Waconta and Sibley streets, with a depth of about one hundred and seventy feet, or any part or portion of the said described premises which lie and are south or east of the southerly or southeasterly line or lines of lot numbered one (1) of section five, (5,) in township twenty-eight (28) north, of range twenty-two (22) west, in the district of lands formerly subject to sale by the United States at the Falls of St. Croix, Wisconsin, according to the official survey of the same made under and by the authority of the United States, and the official plat of the survey of the same returned to the General Land Office of the United States by the surveyor general. The said southerly or southeasterly line or lines of said lot numbered one, (1,) being one of the boundary lines actually run and marked in the surveys returned by the surveyor general, and is commonly called and known as the "meander line" of the left bank of the Mississippi river. And as to whether the said complainants are now, or ever have been,
the owners of, or seized in fee simple or otherwise, of any
27 part or parcel of the said land and premises which lies and is
north or west of the said southerly or southeasterly line or lines of said lot one, section five, &c., said defendant says that it has no knowledge, remembrance, or information thereof, and that it has not and cannot form any belief in relation thereto. The said defendant admits that there is a stone warehouse on the land described in said bill, and admits that the whole of said land is of the value of six thousand dollars.

Said defendant, further answering, admits that the Mississippi river is a deep and navigable stream of water, in which a large amount of valuable commerce, trade, and navigation are carried on between the port of Saint Paul and other ports and places situate on the said river and its tributaries. But said defendant denies that said river flows immediately in front of or within the distance of about one hundred feet of any portion of the said land and premises described and claimed by said complainants in their said bill, as is in said bill alleged. And said defendant says that the said river is at least one hundred and forty feet distant from the nearest part of

said land claimed by said complainants, to wit, from the said lot ten, block twenty-nine, and about one hundred and ninety feet distant from the said "meander line," so called, of said bank of said
28 river. Said defendant admits that the said river in front of the lands and premises described in said bill, and for a short distance below, and for four thousand three hundred feet above the same, is deep and navigable quite up to and along the banks and shores thereof in the condition the said banks and shores now are, and that the said banks and shores of said river, in front of said premises and for a short distance below, and for four thousand three hundred feet above the same, are, in their present condition, well adapted and peculiarly favorable for the landing and moving of the steamboats and other vessels engaged in the commerce, trade, and navigation carried on on said river as aforesaid, and for receiving and discharging their freight and passengers, and for all other purposes connected with the business of such steamboats and vessels. But said defendant avers that the said banks and shores of the said river immediately in front of said premises, and for a short distance above and below the same have been made, graded, and put in their present condition, and so as to be suitable and convenient for the use and landing of steamboats and other vessels aforesaid, by the said defendant in building, erecting, and completing the trestle-
29 work, in filling in the same, and in grading and constructing and finishing the railroad and works set forth and described in said bill.

Said defendant denies that the banks and shores immediately in front of said premises, and for a short distance above and below the same, have been used from the earliest times as a public landing for steamboats and other water craft navigating said river and its tributaries, as is alleged in said bill. But said defendant avers that, before the filling in and grading of the original bank or shore of said river in front of the said premises in and by the building, constructing, and finishing of the said railroad and work by the said defendant, the said bank or shore was not used, and could not be used as a public landing for steamboats or other water craft navigating said river as aforesaid; and that the said bank or shore in its natural condition was not at all fit or convenient for and could not be used, for and as such public landing. Said defendant denies that the said banks and shores for the whole distance from the easterly line of Waconta street below said premises to the westerly line of Jackson street above the same, being a distance of about eight hundred feet, were ever carefully or properly graded or prepared by the city of Saint Paul, so as to facilitate or aid their use as a public landing, or so as to
30 make them convenient or suitable as a public landing, and denies that the said banks and shores, for the whole of said distance, have ever been maintained, or are now maintained, by said city as such public landing. And said defendant avers that the said banks and shores in front of said premises, and for the distance of about two hundred feet above the same, and for the distance of about two hundred feet below the same, were filled in, graded, and put in

their present suitable condition as a public landing by said defendant in and by the building and finishing of the said railroad mentioned and described in said bill, and have ever since the building and finishing of said railroad been maintained by said defendant in their said condition.

Said defendant denies that the whole distance of said bank or shore from the said easterly line of Waconta street to the westerly line of said Jackson street is the usual or ordinary public landing at the port of Saint Paul, and denies that the free and unobstructed use of the whole of such bank between said streets is indispensable to the public or the said complainants. And the said defendant denies that that portion of said bank or shore between said Waconta and Jackson streets possesses, or has facilities or advantages as a
31 public landing superior to all other portions of said bank or shore within the limits of said city. And said defendant avers that the bank or shore of said river from Jackson to Chestnut street, a distance of about three thousand seven hundred and fifty feet, all within the limits of said city, and all above the termination of said railroad, is, and for a long time past has been, duly dedicated to the public, and well graded and prepared as a public levee and landing, and is, and has been, in a suitable condition to be used for all the purposes of a levee and landing.

And the said defendant avers that the ordinary public landing at the port of the said city of Saint Paul is wholly above the premises described in said complaint, and is wholly above and beyond the terminus of the said railroad, as the same is now and was at the commencement of this suit located and constructed, and that that part of the bank or shore of said river which lies in front of the said premises and in front of the said railroad was not commonly and but very rarely used as a public landing, and was of no value as such either to the public or to said complainants prior to the construction of said railroad, and the same is now but comparatively little used, and that only in consequence and by reason of the location and
32 construction of the said railroad and its termination, and the starting and stopping of the trains of cars upon the same at and from that point, and the whole value as a public landing or levee of that portion of said bank or shore in front of said premises described in said bill is caused by the construction of said railroad, and depends, and will continue to depend, upon its continuance and maintenance there.

The said defendant, further answering, denies that the interests or necessities of the public or of the commerce or trade of the city of St. Paul indispensably require the free and unobstructed use of the whole space or portion of ground lying between the easterly line of Waconta street and the westerly line of Jackson street fronting on said river, and being about one hundred feet wide, for the purpose of a public landing or for the purpose of a public street, and denies that the whole of said space has been from the earliest times used as such public landing or street, but said defendant admits that the whole of said space is now used as a public landing and street.

And the said defendant avers that it has not in any way or manner obstructed or interfered with the free use of the same by the construction of said railroad or by any act or thing whatever. And said defendant denies that any portion of said space or ground be-
33 tween Sibley and Waconta streets was ever duly dedicated by the original proprietors thereof, or by the proprietors of adjacent lands, or by any person or persons, or by any lawful authority whatever, to the public to be used as a public landing or public street, or for any use or purpose.

And the said defendant avers that the said defendant is now the sole owner in fee simple of the whole of said space or portion of ground between the said easterly line of Waconta street and a line about midway between Sibley and Jackson street, and has been such sole owner from and since about the tenth day of March, A. D. 1862, by virtue of the acts of the Congress of the United States and of the legislatures of the State of Minnesota, hereinafter set forth and described. And said defendant denies that any portion of said space or ground which lies immediately in front of the land and premises described in said bill, or between the front line of said premises and the water's edge of said river, or any portion of said space between the easterly line of Waconta street and the termination of said railroad, is now or ever has been maintained by the town of Saint Paul or by the city of Saint Paul as a public landing or as a public street.

And said defendant avers that that portion of said space or ground which lies between the said easterly line of Waconta street
34 and the said termination of the said railroad has been filled up and graded by the said defendant in and by the building of said railroad so as to make the same useful, convenient, and of value as a public landing and street, and that the same has been maintained by the defendant in that condition ever since the building and construction of said railroad thereon, and is now so maintained by defendant.

And the said defendant admits that that portion of said space or ground between the said terminus of said railroad and the said westerly line of Jackson street has for a long time past been maintained as a public landing and as a public street, but for what particular length of time, or whether by the town or city of St. Paul, or by private persons, said defendant has not sufficient knowledge, remembrance, information, or belief to state.

Said defendant, further answering, denies that Waconta, Sibley, and Jackson streets are the only public streets leading from other portions of the said city of Saint Paul and from the adjacent country to the public landing of the said city on the said Mississippi river, or communicating therewith, or that the said three streets furnish the only practicable communication with or means of ingress or
35 egress to and from said public landing, as is alleged in said complainants' bill.

And said defendant avers that the public landing or levee of the city and port of St. Paul extends the whole distance and is continuous and unbroken from Sibley street to Chestnut street, a distance

of about four thousand one hundred and fifty feet; that the whole of said distance is now, and for a long time past has been, graded and in complete and good condition for the landing of steamboats and other vessels navigating said river for receiving and discharging the freight and passengers thereof, and for all the uses and purposes of a public landing; and that in addition to the three streets mentioned in said bill, to wit: Waconta, Sibley, and Jackson, there are three other public open and graded streets leading from the central portions of said city and the adjacent country to the said landing, to wit: Roberts, Eagle, and Chestnut streets.

Said defendant admits that those portions of said Waconta and Sibley streets, for the distance of about six hundred feet, and no more, and the whole of Jackson street which lie north and west of of the said "meander line" of the left bank of the Mississippi river, since about A. D. 1849, have been, and now are, maintained
36 by the town and city of Saint Paul as public streets. But as to whether any of said portions of said streets so lying north or west of said line, were, about A. D. 1849, or at any time, duly dedicated by the original proprietors, or by any person or by any authority to the public to be used as public streets, or for any use or purpose, the said defendant says that it has not any knowledge, remembrance, or information thereof, and that it has not and cannot form any belief. But said defendant denies that any part or portion of said streets, or either of them, which lie south or east of said "meander line," has ever been duly dedicated to the public, to be used as public streets by the said proprietors, or by any person or persons, or by any competent authority whatever. And said defendant avers that those parts of Waconta and Sibley streets, which, according to said plat of the town of St. Paul, extend upon and across that part of the bank or shore of said river which has been used as a public landing aforesaid, has never been duly dedicated to the public to be used as a street by any person whatever, or by any competent authority.

And said defendant denies that the free and unobstructed use of the said Waconta and Sibley and Jackson streets, in their connections with the said landing, are indispensable, either to the said complainants or to the public generally.

37 And the said defendant avers that it has done no act or thing which interferes with the lawful and proper use of said streets, or either of them, by said complainants, or the public generally.

Said defendant, further answering, denies that said complainants, or any or either of them, now are, or ever have been, the owners, or seized in fee simple, or otherwise, of that parcel of land lying and being immediately in front of the premises described in said bill, extending from the front line of said premises to the said river, as is alleged in said bill, or any part or parcel thereof.

And said defendant avers that it is now the owner in fee simple of the said parcel of land, and of every part and portion thereof, and was such owner at the time and long before the location and construction of its railroad thereon, as hereinafter stated.

Said defendant, further answering, admits that said defendant is a body corporate, created and established by the laws of the Territory and State of Minnesota, and existing and doing business in said State, under and by virtue of said laws, but denies that said defendant hath ever, at any time, without law, or without color of law, or without right or color of right, or without authority, or without license, forcibly or wrongfully entered upon or taken exclusive possession of the public landing or public street in front of the premises described in said bill, and denies that said defendant hath at any time, or
38 wrongfully, or without right or authority, entered upon or taken possession of all or any portion of any public landing or public street lying between the said easterly line of said Waconta street, and the said easterly line of said Sibley street, and denies that said defendant doth now wrongfully or forcibly, or without right or authority, hold any portion of said landing or street for the purpose of erecting or constructing any railroad thereupon, or for any purpose whatever.

And said defendant avers that all of that portion of the so-called public landing between said Waconta and Sibley streets, and upon which said defendant hath constructed its said railroad, lies and is south and east of said southerly or southeasterly line of said lot one of section five in township twenty-eight north, of range twenty-two west, said line being one of the boundary lines actually run and marked in the surveys returned by the surveyor general of the United States, according to the statute in such case made and provided, and being commonly called and known as the "meander line" of the left bank of the said river, and is now, and has been, since long before the construction of said railroad thereon, the sole property of said defendant, and that pursuant to the acts of the Congress of the United States, and of the legislatures of the Territory and
39 State of Minnesota, hereinafter mentioned and described, said defendant has erected and constructed its said railroad upon the said land, for the carrying, conveyance, and transportation of passengers and freight for hire, and for the transportation of the United States mail under and pursuant to the direction of the Post Office Department of the United States, and as and for a public highway for the use of the government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States, and is now, and has been ever since the erection of said railroad, running daily and regular trains of cars thereupon for the transporting of passengers and freight for hire, and for the transportation of the United States mails under the direction of the Post Office Department as aforesaid, and has maintained, and does now maintain, the same as and for a public highway for the use of the government of the United States, free from toll or other charge, upon the transportation of any property or troops of the United States as aforesaid.

And said defendant further says, that for the purposes of erecting the said railroad, post road, and highway, said defendant hath necessarily thereunto erected and constructed a trestle-work over and upon

the said land between said Waconta and Sibley streets de-
40 scribed in said bill as a "public landing and street," which said trestle-work is about five feet wide, and about six feet above the original surface of the ground, and hath filled in and graded the same, and the whole of the said so-called public street or landing between said Waconta and Sibley streets, and hath put the same in such condition and state of repair so as not to impair or interfere with its free and proper use as such public street and landing. That the top of said trestle-work is of about the same height and level as the high-water mark of said river, and that the railroad track thereon is on a level and even with the surface of the ground, as now filled in and graded, and about the centre of the said space, and that the whole of said space has been, by the construction of said trestle-work and railroad and grading, put and made, and is now in better condition and more convenient and valuable for use as a public street and landing than it was prior to such construction and grading, or could be without the same.

The said defendant, further answering, denies that by reason of the entrance upon or possession or occupancy by the said defendant of the said land described in said bill as a "public landing or street," or by reason of the said erections and constructions thereon,
41 or by reason of the running of the said cars upon the said railroad, or by reason of any other act or thing done or performed by said defendant, said defendant hath impeded or obstructed, or will continue to impede or obstruct, the so-called public street or landing, or hath prevented or will continue to prevent the free use of said so-called public street or landing by said complainants, or by the public generally, or hath rendered or will continue to render the so called public landing or street useless or impracticable as a public landing or street, or hath wholly or in any part, way, or manner whatever cut off the communication of Waconta street aforesaid with the so-called public street or landing, or will continue so to do. But said defendant alleges that by the filling in and grading of the said land for the purpose of constructing the said railroad by the said defendant as aforesaid, the same is and has been rendered and made more useful, practicable, and convenient for any and all of the purposes and uses of a public landing or public street than it was or otherwise would or could be.

Said defendant, further answering, denies that by reason of the construction of the said railroad upon the said land, or by reason of any other act or thing done or performed by said defendant, any
42 property or land belonging to the said complainants has been or will continue to be in any manner or to any extent whatever injured or depreciated or reduced in value or utility; and denies that any land or property belonging to complainants is of any less value than it would be if the said railroad were to be removed; but on the contrary, said defendant alleges that the constructing of said railroad, and the running of the said cars thereon as aforesaid, hath greatly increased the value of all the land in said city adjacent thereto, and the land described in said bill and claimed by the complainants in particular.

Said defendant, further answering, denies that the land and premises described in said bill, to wit, the east half of lot ten and the south twenty feet of the east half of lot three, or any part of portion thereof, do now or ever did front upon any public street or public landing, duly or properly dedicated to the public, or laid out as such by any person or persons or by any competent authority whatever; and denies that the value of said premises does or can or ever did or could rightfully depend upon such frontage, or does or did or can or could ever rightfully depend upon the free or unobstructed
43 maintenance of the so-called public landing or street. And said defendant avers that the so-called public landing or street in front of the said premises is now the sole private property of said defendant, and hath ever been since the United States ceased to the *the* owner thereof. Said defendant admits that said complainants have requested said defendant to remove its said railroad from said defendant's land, (the so-called public landing or street aforesaid,) and that the said defendant refused and still does refuse to do so.

The said defendant, further answering, according to the best and almost of its knowledge, remembrance, information, and belief, and according to the best and utmost of the knowledge, remembrance, information, and belief of its officers, directors, and agents, in answer to the first interrogatory in said bill, 1, denies that said complainants now are or ever have been the owners in fee simple, or otherwise, or seized or in the rightful possession of the whole of the land and premises described in said bill, to wit, the east half of lot ten, and the south twenty feet of the east half of lot three, in block twenty-nine, in the original town of Saint Paul, according to the plat thereof on record in the office of register of deeds for the county
44 of Ramsey, or of any part or portion of the same lying and being south or east of the southeasterly line or lines of said lot one in section five in township twenty-eight north, of range twenty-two, in the district of lands formerly subject to sale at the Falls of St. Croix, Wisconsin, according to the official plat of the survey of the same aforesaid, and as the same were actually run and marked in the surveys returned by the surveyor general of the United States as aforesaid, said lines being commonly called the "meander lines" of the left bank of said Mississippi river. And as to whether said complainants now are or ever have been the owners of or seized in fee simple or otherwise, or in the righful possession of any part of said land and premises lying and being north or west of said last described line or lines, said defendant says that it has no knowledge, remembrance, or information thereof, and that it has not and cannot form any belief in relation thereto. But said defendant admits that said complainants are now, and for more than a year last past have been, in the actual occupancy and possession of the said portions of lots ten and three in block twenty-nine described in said bill. But said defendant says that it, the said defendant, is now, and for a long time prior to the commencement of this suit has been, the owner of and well seized in fee simple and rightfully

45 entitled to the possession of all that portion of the said land and premises described in said bill which lie and are south and east of the said southerly or southeasterly line or lines of said lot one in section five, being the said so-called meander line of the left bank of said river. That the last named and described portion of said land and premises, and so owned by said defendant as aforesaid, is included in and is a part and parcel of the land granted by the United States to the Territory of Minnesota for the purpose of aiding in the construction of railroads therein, by an act of the Congress of the United States, entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of railroads in said Territory, and granting public lands in alternate sections to to the State of Alabama, to aid in the construction of a certain railroad in said State," approved March 3, 1857, and that the said defendant became and now is the owner thereof, and entitled to the same under and by virtue of the said act of Congress, and of an act of the legislative assembly of the Territory of Minnesota, entitled "An act to execute the trust created by an act of Congress entitled 'An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections
46 to the State of Alabama, to aid in the construction of a certain railroad in said State,' and granting certain lands to railroad companies therein named," approved May 22, 1857, and an act of the legislature of the State of Minnesota, entitled "An act concerning land-grant railroads," approved August 12, 1858, and an act of the legislature of the State of Minnesota, entitled "An act in addition to an act concerning land grant railroads, passed August 12, 1858," approved March 6th, 1860, and an act of the legislature of said State, entitled "An act to facilitate the construction of the Minnesota and Pacific railroad," approved March 8, 1861, and an act of the legislature of said State, entitled "An act to facilitate the construction of the Minnesota and Pacific *and Pacific* railroad, and to amend and continue the act of incorporation relating thereto," approved March 10, 1862, and to a sale and purchase of the road, lands, property, rights, and franchises belonging or appertaining to the Minnesota and Pacific Railroad Company, made by the governor of the said State of Minnesota, on the 23d day of June, 1860, in behalf of the State.

That pursuant to and in conformity with the provisions of the said act of Congress, and the said several acts of the legislature of the Territory and State of Minnesota, the said defendant has duly
47 surveyed, located, constructed, completed, maintained, and operated, and is now rightfully maintaining and operating a railroad from Saint Paul via St. Anthony to Anoka, a distance of about thirty miles, and that the said portion of said land and premises is a part and parcel of an alternate section of land designated by an odd number, to wit, section five, within six miles in width on each side of said road, and designated, described, and granted in and by the said act of Congress, and has been duly selected by said defendant, and upon which it has in part built its railroad.

2. In answer to the second interrogatory in said bill contained, said defendant says, that the whole of said lands and premises, including the part thereof which belongs to said defendant, as aforesaid, is of the value of six thousand dollars. That that part of the same which belongs to the defendant is of the value of about four thousand five hundred dollars.

3. In answer to the third interrogatory in said bill contained, said defendant says that the Mssissippi river does flow in front of the said premises, and about one hundred and forty feet therefrom and not nearer.

4. In answer to the fourth interrogatory in said bill contained, said defendant says that the said river in front of said premises, and
48 for a short distance below the same, and for about four thousand three hundred feet above the same, is deep and navigable quite up to its banks as they now are.

5. In answer to the fifth interrogatory in said bill contained, said defendant says that the banks of said river in front of said premises, and for a short distance below the same, and for about four thousand three hundred feet above the same, in their present condition are well adapted to the landing and moving of steamboats and other vessels engaged in the commerce, trade, and navigation of said river, and for receiving and discharging therefrom their freight and passengers; and said defendant, further answering, says, that that portion of the said bank of said river which lies and is between said Jackson and Sibley streets, and for a short distance above Jackson street, has been used for said purposes, and for a public landing for about eighteen years, but said defendant denies that that portion of said river bank which lies and is immediately in front of the said premises was adapted to the purposes of a public landing, or was used as such to any considerable extent, until it was filed in and graded and put in its present condition by the said defendant, in and by the construction of its said railroad as aforesaid, but avers that said defend-
ant, in and by the construction and completion of its said
49 railroad, has filled in and graded said bank in front of said premises so as to make it useful as a landing for steamboats and other vessels navigating said river.

6. In answer to the sixth interrogatory in said bill contained, said defendant denies that the banks or shores of said river, for the whole distance from the easterly line of Waconta street to the westerly line of Jackson street, (being a distance of about eight hundred feet,) were ever at any time carefully graded or prepared by the city of Saint Paul, so as to facilitate or aid their use as a public landing, and denies that the whole distance of said banks or shores between the said streets are now, or ever have been, maintained by the said city as a public landing.

Said defendant, further answering, says that the said banks and shores in front of said premises, and for the distance of about two hundred feet above the same, and for the distance of about two hundred feet below the same, were filled in, graded, and put in their present suitable condition as a public landing by the said defendant,

in and by the building and constructing of the said railroad mentioned and described in the said bill, and have ever since the building of said railroad been maintained by said defendant in a suitable and proper condition for a public landing.

Said defendant further says that the said banks or shores from
50 the said westerly line of Jackson street down to the terminus of said railroad have been maintained by the said city as a public landing.

7. In answer to the seventh interrogatory in said bill contained, said defendant says that the whole distance of the said banks and shores, from the said easterly line of Waconta street to the said westerly line of Jackson street, is not the usual or public landing at the port of Saint Paul, and has never been in use as such; but that the said banks and shores from the said terminus of the said railroad down to the said easterly line of Waconta street, before the filling up and grading thereof by said defendant as aforesaid, were but little used as a public landing, and that the same is not now as much used as a public landing as that part of said banks and shores above the said terminus of said railroad, to wit, above the easterly line of said Sibley street; and said defendant says that the free and unobstructed use of the said banks or shores from the said easterly line of Waconta street to the said westerly line of Jackson street, as a public landing, is not indispensable to the public or to said complainants.

8. In answer to the eighth interrogatory in said bill contained, said defendant says that the banks and shores of said river,
51 within the limits of the city of Saint Paul, from the said Jackson street up to Chestnut street, a distance of about three thousand seven hundred and fifty feet, are now, and for a long time past have been, surveyed, filled in, graded, and maintained by the said city as a public landing, and used as such, and have been duly dedicated to the public as such and for such use; and that the said banks and shores, for the whole of said distance, are now in as good and complete condition for all the purposes of a public landing as any portions of said banks below Jackson street, and present and furnish facilities and advantages as such equal thereto, and are used as such whenever occasion requires; and that those portions of said banks and shores above the terminus of said railroad are now, and ever have been, much more used as a public landing than those portions below the said terminus.

9. In answer to the ninth interrogatory in said bill contained, said defendant says that the interests or necessities of the public, or of the commerce and trade, at the port of the said city of Saint Paul, do not indispensably require the free and unobstructed use for the purposes of a public landing, or for the purposes of a public street, of the whole of the space described in said interrogatory, to wit, from the easterly line of Waconta street to the westerly line of Jackson street, and from the front line extended, of the prem-
52 ises described in said bill, to the Mississippi river; that the said space forms but a very small part, and the extreme lower

end of the public landing at said city; that the public landing of said city above the said Jackson street, three thousand seven hundred and fifty feet as aforesaid, and those portions of said public landing which lie and are above said Jackson street are amply sufficient for all the commerce of said city and port for all the purposes of a public landing thereat; and said defendant says that the whole of said space is not now, and never has been, used as a public landing or street, but that that portion of said space, from the said easterly line of Waconta street up to the terminus of said railroad, to wit, about three hundred and sixty feet to the easterly line of said Sibley street, was never in a fit or proper condition to be used as a public landing or public street, and was not commonly used as such until the same was filled in and graded by said defendant in the building and construction of its railroad as aforesaid; and that the portion of said space from the said terminus of said railroad up to the said westerly line of Jackson street has been used as a public landing for about eighteen years, and that the whole of said space is now used as a public landing or street, and that said defend-
53 ant has not, in any manner, interfered with, or obstructed, the free use of any portion of said space as a public landing or street by the construction of its said railroad, or by any other act or deed whatever.

10. In answer to the tenth interrogatory in said bill contained, said defendant says that no portion of said space which lies south and east of the said southerly or southeasterly line or lines of said lot one, in said section five, being the "meander line" so-called, aforesaid; and that no portion whatever of said space which lies and is between the said terminus of said railroad and the said easterly line of Waconta street was ever duly dedicated by the original proprietors thereof, or by the owners of adjacent lands, or by any person or persons, or by any competent authority whatever, to the public, to be used as a public landing or public street; but said defendant says that that portion of said space which lies north and east of the said meander line, to wit, from about thirty feet from the western side of Sibley street, in said meander line, to the said westerly line of said Jackson street, was about the year 1849 duly dedicated by the original proprietors thereof to the public to be used as a public landing or street; and said defendant, further answering, says that said defendant is now the sole owner in fee simple of the whole of said space which lies and is south and east of the said meander
54 line, to wit, from a point about thirty feet from the said western side of Sibley street to the said easterly line of Waconta street, on the said meander line, as a rear line, and the whole river front between the line of said section five and section six, and the said easterly line of Waconta street produced as a front line, and has been such sole owner ever since the commencement of this suit, and for a long time before, by virtue of the said acts of Congress and of the legislatures of the Territory and State of Minnesota, and of the location and construction of said railroad, in accordance with the provisions and requirements of the said acts. Said defendant, fur-

ther answering, denies that the whole of said space, from the said easterly line of said Waconta street to the said westerly line of Jackson street, is now, or ever has been, maintained by the town or by the city of Saint Paul as a public landing or street; and said defendant avers that no portion of said space which lies and is immediately in front of the premises described in said bill, or between the front line of said premises and the water edge of said river, or any portion of the said space between the said easterly line of Waconta street and the said terminus of said railroad is now, or ever has been, maintained by the town or by the city of Saint Paul as a public landing or street, but said defendant avers that that portion of said space
55 which lies between the said easterly line of Waconta street and the said termination of said railroad has been filled up and graded by the said defendant in the construction of its said railroad, so as to make the same useful and convenient as a public landing and street, and that the same has been maintained in that condition by said defendant ever since the construction of the said railroad thereon as aforesaid, and is now so maintained. But said defendant says that that portion of said space between the said terminus of said railroad and the said westerly line of Jackson street has for a long time past been maintained and kept in a condition to be used as a public landing, but for what particular length of time, or whether by the town or city of Saint Paul, or by private individuals, said defendant has not sufficient knowledge, remembrance, information, or belief to state.

11. In answer to the eleventh interrogatory in said bill contained, said defendant says that there are three public streets, to wit, Waconta, Sibley, and Jackson, from the other portions of the city of Saint Paul and the adjacent country to that portion of the public landing of said city which lies between said Jackson and Waconta streets, and that the three named streets are the only streets that lead
56 directly back to the city and adjacent country from said portion of said landing. But said defendant denies that said three streets furnish the only practicable communication with the said portion of the said public landing, and denies that the said three streets are the only streets leading to or communicating with the public landing of the city of Saint Paul, but said defendant avers that the public landing of the city of Saint Paul extends the whole distance from Sibley street aforesaid to Chestnut street, a distance of about four thousand one hundred and fifty feet, that the whole of said distance is now, and for a long time past has been, graded and in complete condition for the landing of steamboats and other vessels navigating said river, for receiving and discharging the freight and passengers thereof, for the passing and repassing of drays, carts, and teams thereon, and for all the uses and purposes of a public landing and public street, and that that portion of the public landing from Jackson street to Chestnut street is as convenient and as well adapted for all the purposes of a public landing or street as any portion thereof below Jackson street. That in addition to the said Waconta, Sibley, and Jackson streets, there are three other public, open, graded, and travelled streets leading from the back and central portions

57 of said city and the adjacent country to said landing, to wit, Roberts, Eagle, and Chestnut. That two of said streets, to wit, Eagle and Chestnut, are of much easier grade than either of the said Jackson, Sibley, or Waconta streets, and that the communication along said landing for the whole distance from the said Chestnut street, is open, free, and unobstructed.

12. In answer to the twelfth interrogatory in said bill contained, said defendant says that all those portions of said Waconta, Sibley, and Jackson streets which lie north and west of the meander line were, about the year 1849, duly dedicated to the public, to be used as public streets, and that said Jackson street, and about six hundred feet of each of said Waconta and Sibley streets, and no more, have been for many years past and are now maintained by the city of Saint Paul, and used by the public as public streets, but that beyond the distance of about six hundred feet said Waconta and Sibley streets are wholly impassable and useless; but said defendant denies that those portions of said streets, or either of them which lie south or east of the said meander line, have ever been duly dedicated to the public to be used as public streets by any person or persons whatever, or by any competent authority whatever. And said defendant avers that those parts of Waconta and Sibley streets which extend upon or across that

58 part of the bank or shore of said river which has been used as a public landing as aforesaid, and along and upon which said defendant has constructed said railroad as aforesaid, have never been duly dedicated to the public to be used as a public street or landing by any person whatever, or by any competent authority whatever. And said defendant further says that all said portions of said Waconta and Sibley streets which extend upon and across the said bank of said river, and extending from the water's edge of said river across the said bank thereof back to the said meander line, about fifty feet back from the front line of the premises described in said complaint, and about one hundred and ninety feet back from the said water's edge at low water, are solely and exclusively owned by said defendant, and have been so owned by said defendant ever since about the tenth day of March, A. D. 1862.

13. In answer to the thirteenth interrogatory in said bill contained, said defendant says that the free and unobstructed use of the said three public streets, to wit, the said Waconta, Sibley, and Jackson streets, in their communications with the portion of the so-called public landing mentioned in said bill, is not indispensable to said complainants or to the public generally. Said defendant further says,

59 that the location and construction of said railroad along and upon the bank of said river in front of the said Waconta and Sibley streets in no manner obstructs or interferes with the proper use of either of said streets by said complainants or by the public generally.

14. In answer to the fourteenth interrogatory in said bill contained, said defendant says that said complainants are not now and never have been the owners of or seized in fee simple or otherwise of that parcel of land lying and being immediately in front of the

premises described in said bill, extending from the front line of said premises, as described in said bill, to the said river, or of any part or parcel thereof. Said defendant further says that said complainants have not now and never had any right, title, interest, or ownership whatever, subject to a public easement or otherwise, of, in, or to said parcel of land, or any part or portion thereof. But said defendant avers that it, the said defendant, is now the owner in fee simple of said parcel of land, and every part and portion thereof, and has been such owner ever since long before the location and construction of its said railroad thereon, to wit, ever since about the tenth day of March, 1862.

15. In answer to the fifteenth interrogatory in said bill contained, said defendant says that said defendant is a body corporate, created and established by the laws of the Territory and State of Minnesota, to wit: by an act of the legislative assembly of the late Ter ri-
60 tory (now State) of Minnesota, entitled "An act to execute the trust created by an act of Congress, entitled 'An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of a certain railroad in said State,' and granting certain lands to railroad companies therein named," approved May 22d, 1857, and an act of the legislature of the State of Minnesota, entitled "An act to facilitate the construction of the Minnesota and Pacific railroad, and to amend and continue the act of incorporation relating thereto," approved March 10, 1862, and existing and doing business in said State under and by virtue of said laws.

16. In answer to the sixteenth interrogatory in said bill contained, said defendant says that said defendant hath not forcibly or wrongfully entered upon, and hath not taken exclusive possession of the so-called public landing or public street in front of the premises described in said bill, to wit: All that portion of the so-called public landing or public street lying between the said easterly line of Waconta street and the easterly line of said Sibley street, and doth not now wrong-
fully or unlawfully hold the same or any part thereof, and hath
61 not wrongfully or unlawfully constructed thereupon a railroad for the conveyance and transportation of passengers and freight for hire, and is not now, and never has been, wrongfully or unlawfully running daily and regular trains of cars thereupon, carrying and transporting passengers and freight thereupon for hire. But said defendant, further answering, says that all that portion of the so-called public landing which lies between said Waconta and Sibley streets, and upon which said defendant has constructed said railroad for the uses and purposes hereinbefore set forth, lies south and east of the southerly line or lines and boundary of said lot one, of section five, in township twenty-eight north, of range twenty-two west, as the same was actually run and marked in the surveys returned by the surveyor general of the United States, pursuant to the statute in such case made and provided, said line being commonly called the

meander line of the left bank of said river, and is now, and has been since long before the construction of said railroad thereon, to wit: since about the tenth day of March, 1862, the sole property of said defendant; and that pursuant to the said acts of the Congress of the United States, and of the legislatures of the said Territory and State of Minnesota, and for the uses and purposes therein expressed
62 and provided, the said defendant has erected and constructed said railroad now known as the Saint Paul and Pacific railroad, (formerly the Minnesota and Pacific railroad,) and extending from the said city of Saint Paul, at or near said Sibley street to Anoka, in said State, and is now engaged in extending the same towards the navigable waters of the Red river of the North, for the carrying of passengers and freight for hire, and for the transportation of the United States mail under the direction of the Post Office Department, and as and for a public highway for the use of the government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States, and is now and has been ever since the erection and construction of said railroad as aforesaid, running daily and regular trains of cars thereupon for the uses and purposes aforesaid, and hath, in pursuance of the right, power, and authority conferred upon it by the said act of Congress, and by the said several acts of the legislatures of the Territory and State of Minnesota, erected and constructed a portion of said railroad upon that portion of the so-called public landing or public street lying and being between the said easterly line of Waconta street and the said easterly line of Sibley
63 street, and is now running its cars thereupon for the uses and purposes aforesaid. And the said defendant avers that the location and construction of the said railroad thereupon as aforesaid, and the daily running of cars thereupon was and is necessary and proper in order to execute and fulfil the trusts reposed in it; and to carry out the objects and intents of the said acts of Congress, and of the legislatures of the Territory and State of Minnesota, and in order to make, establish, construct such United States post road and such highway for the use of the government of the United States as aforesaid. And—

17. In answer to the seventeenth interrogatory in said bill contained, said defendant says, that for the purpose of erecting and constructing the said railroad, post road, and highway for the use of the government of the United States as aforesaid, and necessary thereto, and in order to carry out, fulfil and execute the trusts in it reposed and vested in and by said acts of Congress and of the legislatures of the said Territory and State of Minnesota, said defendant hath necessarily erected and constructed a trestle-work over and upon the said land between said Waconta and Sibley streets described in said bill as a "public landing and street," which said trestle-work is about five feet wide, and hath filled in and graded the same under and on
64 each side of the same with earth to an equal elevation therewith, which is about six feet above the surface of the same as it was before such filling in and grading; that the top of the same

is now only about the elevation and height of high water in said river, and that the track of said railroad is laid on the top thereof and is about seventy-five feet from the edge of the water of said river at low water, and within a few feet thereof at and during high water; that in the erection of said trestle-work upon said land, and the filling in and grading the same as aforesaid, said defendant hath not made an embankment of earth as stated in said bill, but hath filled in and graded the said land for the whole width thereof so as to leave the surface thereof uniform with an easy, gradual, and proper slope upon the river side of the same to the water edge at low water, and a uniform and even surface from said part where said slope commences back to the buildings fronting on the same, and described in said bill, a distance of about fifty feet.

18. In answer to the eighteenth interrogatory in said bill contained, said defendant says, that said defendant hath refused, and doth now refuse, to remove said railroad from said defendant's land, to
65 wit, from the land described in said bill as a "public landing or street," and extending from the easterly side of said Waconta street to the easterly side of said Sibley street, and that said defendant doth persist in using and occupying the said land for the purpose of continuing and operating said railroad thereon for the use and purposes as aforesaid.

The said defendant, further answering, says, that said defendant is a body corporate, created and established by and pursuant to the laws of the Territory and State of Minnesota; that is to say, by an act of the legislative assembly of the Territory of Minnesota, entitled "An act to execute the trust created by an act of Congress entitled 'An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State,' and granting certain lands to railroad companies therein named," approved May 22, 1857. And an act of the legislature of the State of Minnesota entitled "An act to facilitate the construction of the Minnesota and Pacific railroad, and to amend and continue the act of incorporation relating thereto," approved March 10, 1862, and organized, existing, and doing business in said State under
66 and by virtue of said laws. And that said defendant, by virtue of the legislative acts aforesaid, and in pursuance thereof, and under the right, power, and authority therein granted and contained, and in order to fully carry out, execute, fulfil, and perform the trusts in and by said acts created and reposed in said defendant, has constructed a railroad known as the Saint Paul and Pacific railroad, which is the same railroad mentioned and described in said bill, from the city of Saint Paul, near Sibley street aforesaid, to Anoka in said State, and is now engaged in extending the same to the navigable waters of the Red river of the North, and is, and for a long time has been, operating the same and running daily and regular trains of cars thereupon for the carrying and transportation of passengers and freight and the United States mail, under the directions of the Post

Office Department. And that a portion of said railroad in said city of Saint Paul is located and constructed upon the land described in said bill as a "public landing or street," to wit: Upon the space of ground lying and being in front of block twenty-nine in the original town of Saint Paul, according to the plat thereof on record in the office of the register of deeds of the said county of Ramsey, or between the front line of said block, according to said plat, and
67 the water's edge of the Mississippi river, and extending from the easterly line of Waconta street to the easterly line of Sibley street, as set forth and described in said bill, and that the terminus of said railroad in said city of Saint Paul is about on a line with the easterly side of said Sibley street aforesaid produced.

And said defendant, further answering, says, that the whole and every part and parcel of the said lands described in said bill upon which said defendant is therein charged to have entered and committed the acts and things complained of, and upon which it has constructed a portion of said railroad as aforesaid, and all that portion of said lot ten in block twenty-nine which is situate, lying, and being south or east of the southerly or southeasterly line or lines of said lot one, section 5, township twenty-eight north, of range twenty-two west, as the same was originally surveyed and run under and by the authority of the United States, and according to the official plat of the same on record in the General Land Office of the United States, being commonly called the meander line of the left bank of the Mississippi river, and being one of the boundary lines actually run and marked in the surveys returned by the surveyor general of the United States pursuant to the statute in such case made and provided; and all of the lands between said line of said lot num-
68 bered one and the meander line, so-called, of the right bank of the Mississippi river, are a part and parcel of the same lands and premises which were granted by the United States to the Territory and State of Minnesota by an act of the Congress of the United States, entitled "An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory, and for granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in State," approved March 3d, 1857, and which were granted by the said Territory and State of Minnesota to the said defendant, the Saint Paul and Pacific Railroad Company, to execute the trusts created by said act of Congress and to aid in the construction of the said Saint Paul and Pacific railroad in and by the said several acts of the legislatures of the said Territory and State of Minnesota relating thereto and hereinbefore mentioned and described, and that the whole and every part and portion of the said land and premises which lie and are south and east of the said southerly or southeasterly line or lines of said lot one, commonly called the meander line of the left bank of the Mississippi river, and upon which the said defendant has constructed said railroad, and upon which it
69 has done and committed the acts and things complained of in said bill, is now and has been ever since long before the said

railroad was constructed thereon as aforesaid, the sole property of said defendant. And that by virtue of the said acts of Congress and of said legislatures, said defendant has entered upon and taken possession of the said lands and premises last above described, for the purpose of constructing, operating, and maintaining said railroad thereon for the uses and purposes in and by said acts provided, which are the same lands and premises upon which the railroad mentioned in said bill is constructed, and upon which the acts and things therein named complained of have been committed. And said defendant, further answering, says that all the acts and things by it done, threatened, or contemplated, as charged in said bill, were and are necessary and proper to be done in order to construct, maintain, and operate the said railroad authorized to be constructed, maintained, and operated by the said defendant as aforesaid, and to execute, fulfil, and discharge the obligations and trusts created and reposed in said defendant by and on behalf of the United States and the Territory and State of Minnesota, in and by the acts of Congress
70 and of the legislatures of the Territory and State of Minnesota aforesaid.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said bill charged, without this that there is any other matter, cause, or thing in the said complainants' bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant: All which matters and things this defendant is ready and willing to aver, maintain, and prove at this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

Seal of Saint Paul and Pacific Railroad Company.

MASTERSON & SIMONS,
Solicitors and of Counsel for Defendant.

And afterwards, to wit, on the second day of May, in the year our Lord one thousand eight hundred and sixty-four, came the said plaintiffs, by their said solicitor, and filed in the clerk's office of said court their replication to the answer of the said defendant in
71 the words and figures following, to wit:

Circuit court of the United States for the district of Minnesota.

The replication of George D. Humphreys, Lucius H. Terry, and Moses M. Broadwell, plaintiffs, to the answers of the Saint Paul and Pacific Railroad Company, defendant:

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto say, that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant.

242

St Paul & Pacific Railroad Co v. Humphreys et al
Appeal from Circuit Court to Supreme.

St Paul & Pacific Railroad Co and others v. Cedar & Scharmeier.
Error to Supreme Court of Minnesota.

These two cases present the same general question; namely; Was the land, in front of a ~~practical part of~~ said ~~road~~ granted as part of a railroad before bounded or outside of the limits fixed by the granting of the act to the center of the river?

In 1864 the practice of the Court or practice of the Court in such cases was changed, and the testimony was ordered, instead of plaintiff, stopped and returned to the Clerk and Master, and was ordered to be transmitted to the Supreme Court of Minnesota

to take testimony.

73 And afterwards, to wit, on the second day of said term, the following proceeding, among others, was had, viz:

GEORGE D. HUMPHREYS *et al.*
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY. } Chancery.

On motion of Lorenzo Allis, plaintiffs' solicitor and of counsel, ordered that the order setting this cause down for hearing be, and the same is hereby, set aside and overruled. Ordered further, that this cause be stricken from the calendar, and that the time for taking the testimony herein be, and it is hereby, extended until the first Monday in October, A. D. 1865.

railro
said
of sa
sessi
purp
there
whic
tione
there
fenda
threa
neces
opera
and c
fulfil,
in sai

70

An
tion
out t
comp
this c
and s
nied,
matte
tain,
to be
behal
Sea

An
our L
plaintiffs, by their said solicitor, and filed in the clerk's office of said
court their replication to the answer of the said defendant in
71 the words and figures following, to wit:

Circuit court of the United States for the district of Minnesota.

The replication of George D. Humphreys, Lucius H. Terry, and Moses M. Broadwell, plaintiffs, to the answers of the Saint Paul and Pacific Railroad Company, defendant:

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto say, that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant.

Without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true, all which matters and things these repliants can and will ready to aver and prove as this honorable court shall direct, and humbly pray as in their said bill they have already prayed.

LORENZO ALLIS,
Solicitor and of Counsel for Plaintiffs.

And afterwards, to wit, at rules held at the clerk's office of said court on the sixth day of June, in the year of our Lord one
72 thousand eight hundred and sixty-four, the following proceeding, among others, was had, viz:

GEORGE D. HUMPHREYS, LUCIUS H. TERRY, and Moses M. Broadwell,
vs.
THE SAINT PAUL AND PACIFIC RAILROAD COMpany.

And now comes the plaintiffs in this cause, by Lorenzo Allis, their solicitor, on whose motion it is ordered that this cause be, and it is hereby, set down for hearing at the next general term of this court, on the third Monday in June, A. D. 1864, or whenever thereafter the same shall come on for hearing.

And afterwards, to wit, at a general term of said court, begun and held at the city of Saint Paul in said district, on the third Monday, being the nineteenth day of June, in the year of our Lord one thousand eight hundred and sixty five, and on the first day of said term, the following proceeding, among others, was had, viz:

GEORGE D. HUMPHREYS *et al.*
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY. } Chancery.

And now come the plaintiffs, by their solicitor, and gives notice of a motion to strike this cause from the calendar and for further time to take testimony.

73 And afterwards, to wit, on the second day of said term, the following proceeding, among others, was had, viz:

GEORGE D. HUMPHREYS *et al.*
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY. } Chancery.

On motion of Lorenzo Allis, plaintiffs' solicitor and of counsel, ordered that the order setting this cause down for hearing be, and the same is hereby, set aside and overruled. Ordered further, that this cause be stricken from the calendar, and that the time for taking the testimony herein be, and it is hereby, extended until the first Monday in October, A. D. 1865.

And afterwards, to wit, in the seventh day of said term, the following proceeding, among others, was had, viz:

GEORGE D. HUMPHREYS *et al.*
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY. } In chancery.

The respective parties to this suit having entered into stipulation therefor, ordered that the order heretofore made at this term striking this cause from the calendar be, and the same is hereby, set aside and rescinded, and that said cause be placed on the calendar for trial this term.

And afterwards, to wit, on the eighth day of said term, the
74 following proceeding, among others, was had, viz:

GEORGE D. HUMPHREYS *et al.*
vs.
THE ST. PAUL AND PACIFIC RAILROAD Company. } In chancery.

Hon. Samuel F. Miller, judge presiding.

This cause came on to heard at this term, and was argued by counsel and submitted to the court for decision, and by the court held under advisement.

And afterwards, to wit, at a general term of said court, begun and held at the city of Saint Paul, in said district, on the third Monday, being the eighteenth day of May, in the year of our Lord one thousand eight hundred and sixty-six, on the second day of said term, the following, among other proceedings, was had, viz:

GEORGE D. HUMPHREYS, LUCIUS H. TERRY, and Moses M. Broadwell,
vs.
THE SAINT PAUL AND PACIFIC RAILROAD Company. } In chancery.

And now this cause having been heretofore submitted to the court, and by the court held under advisement, his honor Judge Miller presiding, and the court being fully advised in the premises, it is by the court ordered, adjudged, and decreed as follows, viz:

75 That the said defendant, its president, directors, officers, and servants, agents, and attorneys, and each and every of them, be, and they are hereby, forever restrained, by injunction of this court, from entering upon, possessing, occupying, or holding the public landing and street in front of the east half of lot ten, (10,) and the south twenty (20) feet of the east half of lot three, (3,) in block twenty-nine, (29,) in the original town of Saint Paul, in the county of Ramsey, in the State of Minnesota, according to the plat thereof, or record in the office of the register of deeds for the county of Ramsey aforesaid, being in the present city of Saint Paul, and between said premises and the Mississippi river, or any part thereof, and from erecting or

constructing any railroad or trestle-work or embankment or railway track thereupon, and from running any cars thereupon, and from in anywise impeding, obstructing, or interfering with the free use of said public landing and public street, and every part and portion thereof by the public, or by the plaintiffs, and that the said defendant is hereby directed and required to remove within six months, and absolutely, from the aforesaid public street and landing, and every part and portion thereof, all embankments, trestle-work, railway track, and railroad, and every part and portion thereof, and all and every impediment and obstruction to the free and uninterrupted use
76 of said public street and landing by the public, and by the plaintiffs, which have been placed thereon by the defendant, its agents or employees, and to restore the said public street and landing to the same condition it was in previous to the entry of the defendant thereon for the purpose of constructing and erecting its railroad works thereon, and that the defendant pay the plaintiffs their costs, to be taxed by the clerk of this court.

SAM. F. MILLER, *Judge*.

(Here follows map, marked page 76.)

77 Circuit court of the United States for the district of Minnesota.

GEORGE D. HUMPHREYS, LUCIUS H. TERRY, and Moses M. Broadwell, plaintiffs,
vs.
THE ST. PAUL AND PACIFIC R. R. CO., def't.

In this cause the parties stipulate and agree that the order heretofore made at this term, striking said cause from the calendar, &c., shall be rescinded, and that said cause shall be again placed upon the calendar, and stand for hearing this term, and that the same shall be heard upon the pleadings and the evidence hereinafter specified, and the facts hereinafter admitted; that is to say, the pl'ffs will put in evidence the patent from the United States to Louis Roberts, a copy of which is hereto annexed and marked C, and which copy is to be received and admitted on said hearing in all respects with like effect as and in the stead of the original patent.

The recitals in said patent contained are hereby admitted, and are, on said hearing to be admitted and taken as true.

The pl'ffs also will put in evidence the U. S. government official survey and plat referred to in said patent of the lands described in
78 said patent, viz., the field-notes of said survey, of which a copy is hereto annexed, marked "A," and which copy is to be received and admitted on said hearing in all respects with like effect, as and in the stead of the original field-notes, and also the plat of said survey, a copy of which is hereunto annexed, and marked "B," which copy is to be received and admitted at the said hearing in place of, and with like effect as, the original plat.

And the following facts are hereby admitted and are to be taken and received as true on said hearing, viz: That in the spring of

1849 the said lot one (1) in said section five (5) were surveyed, laid out, and platted into town blocks, lots, streets, &c., constitutting a part of the town of St. Paul. The said survey and plat of said town included all the land embraced in lot one (1) and extended to the main channel of the Mississippi river, without regard to the meander line of said lot. The premises described in the plaintiffs' complaint as to lots and blocks, to wit, the east half of lot ten (10) block twenty-nine, (29,) are so designated by and upon said plat of the town of St Paul, and are situated in the triangular fraction of land in the northwest corner of said section five, (5,) part about one-half of said lot ten (10) in block twenty-nine is situated south of the meander line of said lot one (1) in said section five, (5.) The residue of said lot ten (10) is on the north side of said meander line.

79 The plat hereto annexed and marked "D" is a copy of that portion of the said original town of St. Paul, embracing the locus in quo, &c., and is hereby admitted and is to be admitted and received on the hearing in place of and with like effect as the said original plat, and also the plat hereto annexed and marked "G" is admitted, and is to be received and taken on the hearing as true and correct representation and statement of the physical facts thereby and therein delineated. This plat exhibits the north and west line of said lot one (1) in said section five, (5;) also the meander line of the same by the courses and distances thereof, as specified in the said field-notes; and also that part of said lot 10 in block 29 which lies on the north side, and that part thereof which lies on the south side of the said meander line. All that parcel of land lying between the front or southerly line of said block 29 and the main channel of the Mississippi river, as well as the like space between the blocks west of said block 29 and the river, is on said town plat designated as "Landing." The said town plat was certified by the proprietors of the lands included in it (and among them is the said Louis Roberts) on the 16th day of May, 1849, and the same was duly recorded in the office of the proper register of deeds.

That after the making and recording of said plat of the town of St. Paul, and prior to the grievances complained of, the title

80 in fee to said east half of said lot 10 in said block 29, as designated on said town plat, was duly transferred and passed from the said Louis Roberts through intermediate conveyances to the said plaintiffs, who were at the time of the commencement of the railroad works hereinafter described, and of the commencement of this action, the owners of said one-half of the said lot, and seized of the title thereto in fee, with the appurtenances, to the extent to which the said Louis Roberts received the title thereto from the United States, and to the extent of his right and power to convey the same, and no further.

That ever since St Paul has been organized under the city charter thereof, passed March 4, 1854, the municipal government of the said city, created and established by the said charter, has exercised municipal power and control over the space or parcel of land designated on said plat as "Landing" and lying between the main chan-

nel of the Mississippi river and the said block 29, and other blocks west of it, and that in the exercise of such authority over the said landing the said city government established a grade therefor, and prior to March, 1856, caused considerable work to be done towards reducing the surface of said "Landing," or levee, to the grade so established.

That after that part of said landing or levee lying between the said warehouse and the main channel of the Mississippi river
81 had been partially graded by the city of St. Paul, and while it was being used for the purpose of a public levee or "landing" in connection with the navigation of the said river, the defendant "the St. Paul and Pacific Railroad Company," entered upon the same for the purpose of there constructing railroad tracks permanently and for continued use, without any definite limit as to time. The said defendant commenced the construction of railroad tracks there in the fall of 1862, and since has completed the said railroad tracks along said landing or levee in front of said block 29 to a point nearly opposite the southwest corner of said block, the same being located on said levee directly between the said lot and warehouse and the main channel of the Mississippi river.

In constructing the said railroad tracks the defendant has so raised the grade upon the said levee that the top of the rails thereof is about 34 inches higher than the lower floor of the said warehouse, and the north rail of said track is 50.3 feet from the front wall of said warehouse. There are two tracks there on a level with each other, or nearly so, and the grade from the south side of the south track to the water is rendered much steeper than the former grade of the levee between the warehouse and the water. The diagram of a cross section of the said levee in front of warehouse on plat "G," hereto annexed, exhibits the change of grade made upon
82 the levee at that point by the construction of the said railroad tracks and the relation of those tracks to the said warehouse and to the water of the river at different stages.

That the whole of the said railroad works of the defendant, and of which the plaintiffs have complained in this action, are located upon "Island No. Eleven" as defined by the meander lines thereof, and exhibited on plat "G" hereunto annexed, and south of it; and said "Island No. 11" is in section 5.

And the said defendant will offer in evidence the field-notes, a copy of which is hereto annexed and marked "F," and the plat, a copy of which is hereto annexed and marked "E," which said copies are, on the hearing, to be taken and received with like effect as and in the place of the original field-notes and plat of such survey.

But the said plaintiffs will object on the hearing to the same being received in evidence on the ground that they are incompetent and irrelevant, and the court having ruled on said objection, the party against whom such ruling shall be made will except to said ruling.

and on any appeal which may be taken in this cause the party so excepting shall have the benefit of such exception.

Dated June 27, 1865.

LORENZO ALLIS,
Plaintiffs' Solicitor.
MASTERSON & SIMMS,
Defendants' Solicitors.

83 A.

Copy of the field-notes of the survey of that part of section 5, *township No.* 28 *north, of range No.* 22 *west,* 4*th principal meridian, (situate on the north or left bank of the Mississippi river,) included in the original survey, approved March* 13*th,* 1848.

North boundary, (township line;) West from corner of sections 4 and 33, from which a B. oak 14 in. diam., bears N. 31 W., 34 l'ks dist.; B. oak 12 in. diam., bears N. 33 E., 60 l'ks dist.; B. oak 11 in. diam., bears S. 55 W., 26 l'ks dist.; B. oak, 6 in. diam., bears S. 65 E., 14 l'ks dist.; thence between sections 5 and 32, var. 11° 7.60 to bend of Mississippi river and set meander post from which a B. oak, 6 in. diam., bears S. 75 E., 52 l'ks dist.; B. oak, 6 in. diam., bears N. 6 E., 26 l'ks dist., 63.10; leaves bend of river on same side and set meander post from which a W. maple, 48 in. diam., bears west 11 l'ks dist.; W. maple, 36 in. diam., bears N. 30 E., 6 l'ks dist., 80.00; set post corner of sections 5, 6, 31, and 32, from which a B. oak, 5 in. diam., bears S. 70 E., 30 l'ks dist.; B. oak, 7 in. diam., bears S. 54 W., 68 l'ks dist.; B. oak, 8 in. diam., bears N. 34 W., 133 l'ks dist.

Subdivisions, commencing on north boundary, between sections south 4 and 5; thence , var. 10° 40′ E., 3.50, intersect left bank of Mississippi river and set post for meander corner, from which a burr oak, 18 in. diam., bears S. 85 E., 74 l'ks dist.; burr oak, 12 in. diam., bears N. 21 W., 115 l'ks dist.

84 Commencing in north boundary, between sections south 5 and 6; thence , var. 10° 45′ E., 2.00; enter bottom course S. W., 12.83, intersect left bank of Mississippi river and set post for meander corner, from which an elm, 20 in. diam., bears N. 30½ E., 169 l'ks dist.; elm, 22 in. diam., bears N. 82½ W., 161 l'ks dist.

Meander of left bank of Mississippi river, commencing at meander post on line between sections 4 and 5; thence in sec. 5, up-stream, N. 65½ W., 8.40, to line of north boundary, 7.60 l'ks, west or corner to sections 4 and 5.

Beginning on north boundary, 63.10 l'ks, west of corner to sections 4 and 5; thence up-stream, S. 61 W., 6.50; S. 54 W , 6.00; S. 46 W., 5.00; S. 40 W., 3.96, to line of sections 5 and 6, at lower end of town of St. Paul.

Survey made October 27, 1847.

Survey approved by surveyor general March 15, 1848.

(Here follows map, marked page 84.)

85 *Certificate No.* 50.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, greeting:

Whereas Louis Roberts, of St. Croix county, Wisconsin, has deposited in the General Land Office of the United States a certificate of the register of the land office at the Falls of St. Croix, whereby it appears that full payment has been made by the said Louis Roberts according to the provisions of the act of Congress of the 24 April, 1820, entitled "An act making further provisions for the sale of public lands," for lots numbered one (1) and two of section five in township twenty-eight north, of range twenty-two west, in the district of lands subject to sale at the Falls of St. Croix, Wisconsin, containing ten acres and sixty-one-hundredths of an acre, according to the official plat of the survey of said lands, returnable to the General Land Office by the surveyor general, which said tract has been purchased by the said Louis Roberts:

Now know ye that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Louis Roberts and to his heirs the said tract above described. To have and to hold the same, together with all the rights, privileges, immunities, and
86 appurtenances of whatever nature thereunto belonging, unto the said Louis Roberts and to his heirs and assigns forever.

In testimony whereof I, Zachary Taylor, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and forty-nine, and of the independence of the United States the seventy-third.

By the President:

Z. TAYLOR,
By THO. EWING, *Sec'y.*

Recorded, vol. 1, page 1.
[SEAL.]

E. S. H. LAUGHLIN,
Recorder of the General Land Office.

Filed for record on the 18th December, A. D. 1849, at 2 o'clock p. m.; recorded in Book A of deeds on page 61.

(Here follows map, marked page 86.)

F.

87 Township line between township 28 and 29 N., R. 22 W., west between sections 5 and 32, variation 11°, 63.10, leave bend of river and set meander post, from which a white maple, 48

in. diam., bears west 16 l'ks dist.; a white maple, 36 in. diam., bears N. 30 E., 6 l'ks dist.; 80.00, set post at corner to sect. 5, 6, 31, and 22, from which a burr oak, 5 in. diam., bears S. 70 E., 30 l'ks dist.; a black oak, 7 in. diam., bears S. 54 W., 68 l'ks dist.; a black oak, 8 in. diam., bears N. 34 W., 133 l'ks dist.

Township 28 N., R. 22 W., 4° prin. mer.; south, between sections 5 and 6, variation 10° 45′; 2.00, enter bottom course S.W.; 12.83, intersect left bank of Mississippi river and set post for meander corner, from which an elm, 20 in. diam., bears N. 30½ E., 169 l'ks dist.; an elm, 22 in. diam., bears N. 82½ W., 161 l'ks dist.; land level, 2d rate soil; timber, maple, ash, elm, &c.

Meanders of left bank of Mississippi river: Beginning on north boundary 63.10 ch's west of corner to sec. 4 and 5; thence up-stream S. 61 W., 6 ch's 50 l'ks; S. 54 W., 6 ch's; S. 46 W., 5 ch's; S. 40 W., 3 ch's 96 l'ks, to line of sections 5 and 6, at lower end the town of St. Paul.

Survey made October 27, 1847.

Survey approved by surveyor general, March 15, 1848.

88 Survey of an island in the Mississippi river, in section five (5,) township 28 N., R. 22 W., 4th prin. mer.: Beginning at the meander post on left bank of Mississippi river, on line between sec's 5 and 6, from which the flag on the head of island bears N. 70° 15′ E., distant 1.67 chs., and set post for witness on mound of earth; thence N. 65° 15′ E., 8 chs. 17 lks.; N. 56° 45′ E., 5 chs. 26 lks.; N. 45° 30′ W., 2 chs. 61 lks.; S. 56° 15′ W., 5 lks. 87 chs.; S. 52° — W., 4 lks. 68 chs.; S. 36° 15′ W., 2 lks. 34 chs. to point of beginning. Banks low; alluvial soil, 3d rate; timber, none. This island is at and embraces part of the lower levee of St. Paul, and at the upper end of the island it has been graded from the main bank, (which is about 4 feet higher than the island,) cut across the island to the river. All the timber has been cut off for several years, and, therefore, I could not take bearings to the witness point.

Surveyed March 13th, 1856.

Survey approved by surveyor general, Sept. 24, 1856.

89 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To George D. Humphreys, Lucius H. Terry, and Moses M. Broadwell, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to an appeal, all the papers relating to which are in the clerk's office of the circuit court of the United States for the district of Minnesota, wherein you are plaintiffs and appellees, and the Saint Paul and Pacific Railroad Company is defendant and appellant, to show cause, if any there be, why the judgment in the said appeal papers mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel F. Miller, one of the justices of the said Supreme Court of the United States, this twenty-third day of June, in the year of our Lord, 1866.

SAM. F. MILLER, *Judge.* [SEAL.]

50-c. in. rev. stamp, cancelled.

90 STATE OF MINNESOTA, *County of Ramsey, ss:*

Orlando Simons, of said county, being duly sworn, deposes and says, that on the 25th day of June, A. D. 1866, he served a true copy of the annexed citation upon Lorenzo Allis, esq'r., personally, who is personally known to deponent to be the solicitor and counsel of George D. Humphreys, Lucius H. Terry, and Moses M. Broadwell, the plaintiffs and appellees named in said citation, and to whom the same is directed, by delivering the said copy to, and leaving the same with, the said Lorenzo Allis, at the city of Saint Paul, in said county of Ramsey, and State of Minnesota.

ORLANDO SIMONS.

Sworn to and subscribed before me, at Saint Paul, Ramsey county, Minnesota, this 25th day of June, A. D. 1866.

[L. S.] H. E. MANN, *Clerk.*

91 Due service of a copy of the within citation upon me, this day, is hereby admitted.

St. Paul, June 25th, 1866.

LORENZO ALLIS,
Pl'ff's' Solicitor.

Filed June 25, 1866.

H. E. MANN, *Clerk.*

92 UNITED STATES OF AMERICA,
Circuit Court of the United States
for the District of Minnesota, ss:

I, H. E. Mann, clerk of said circuit court for the district of Minnesota, do hereby certify and return to the honorable the Supreme Court of the United States that the foregoing is a true and complete transcript of the records, process, pleadings, orders, final decree, and all other proceedings in said cause, and also of all the depositions, exhibits, and proofs taken therein, as appears from the original records and files of said court.

And I do further certify and return that I have annexed to the said transcript and do hereby transmit therewith the original citation of appeal, together with the proof of the service thereof.

In witness whereof I have hereunto set my hand and affixed the seal of the said court, at Saint Paul, in the district aforesaid, this eighth day of November, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States the ninety first.

[L. S.] H. E. MANN, *Clerk.*

Fees for return, $39 60.

Filed 26th November, 1866.

Supreme Court of the United States.

THE ST. PAUL & PACIFIC RAILROAD COMPANY, *Appellant*,

vs.

GEORGE D. HUMPHREYS, LUCIUS H. TERRY & MOSES M. BROADWELL, *Appellees.*

No. ~~151~~. 37

Statement.

In January, 1863, the appellees filed their bill of complaint in chancery against the appellant, alleging that they were, and for a year had been, seized in fee and possessed of the east half of lot ten, and the south 20 feet of the east half of lot three. in block twenty-nine, in the original town of St. Paul, in the County of Ramsey and State of Minnesota, with a front of 25 feet on the levee between Wacenta and Sibley streets, with a depth of about 170 feet, with a stone ware-house thereon, and that the premises were of the value of $6,000; that in front of the premises, at a distance of about 100 feet, flows the Mississippi river, a deep and navigable stream of water on which a large amount of valuable commerce, trade, and navigation are carried on between the port of St Paul and other points on said river and its tributaries; that immediately in front of said premises the river is deep and navigable quite up to the banks and shores, and that the banks and shores are peculiarly adapted for the landing and mooring of steamboats and other vessels engaged in commerce, and for receiving and discharging freight and passengers, for which purposes the same have been used from the earliest times; that about five years prior to the filing of the bill, the city of St. Paul, at a great cost, graded the banks in front of said

premises above and below the same, preparing the same for its use as a public landing, since which time the city has maintained it as such landing; that it is the usual public landing at the city, and is indispensable to the public and to the appellees; that no other portions of the banks of the river within the limits of the city presents equal facilities and advantages as a public landing, and that the interests and necessities of the public and of the trade and commerce of the city indispensably require the free and unobstructed use of the whole space in front of said premises for such public landing and street, (the said space being about 100 feet wide,) to which purpose and use the same was dedicated in 1849, by the original proprietors thereof, and of the adjoining lands; that the landing is approached from other portions of the city only by the streets of Wacenta, Sibley, and Jackson, and that the appellees own the lands in front of their premises and to the river in fee, subject only to the public easements therein; that the appellants, without, right authority, or license, or the color thereof, and against the remonstrance and objection of the appellees, forcibly and wrongfully entered upon, took permanent possession of the public landing and street lying between Wacenta and Sibley streets, and holds the same, and hath constructed thereon a railroad for the conveyance and transportation of passengers and freight, and run daily trains of cars thereon; and in the construction of such road, hath erected and constructed a trestle work, and upon either side thereof and of equal heighth therewith, an embankment of earth, upon which the railroad is laid, and that such structure is of the width of about 40 feet and about 6 feet above the surface of the street and landing as graded and established by said city, and occupies about the middle of said landing and street; that said structure and the running of the cars thereon, obstruct the said street and landing and the use thereof, and will permanently obstruct the same, and will render the same nearly useless as a street and landing; that the value of the said

premises greatly depends upon its frontage upon said street and landing, and that by the said acts of the appellants, said premises are greatly depreciated in value and will continue so depreciated; that they have requested the appellants to refrain from such use and occupancy of said street and landing, which request has been refused; that they are without adequate remedy at law, and therefore they seek by writ of injunction to restrain such occupancy and use of said street and landing.

Eighteen interrogatories, founded upon the statements of the bill, were propounded to appellants.

Prayer, that the appellant, its officers, agents, and attorneys may, by writ of injunction, be restrained forever from entering upon and occupying said public street and landing, and from the construction and maintenance of said railroad thereon, and from in anywise obstructing the free use thereof. See pages 1 to 7 of Record.

After the demurrer to the bill had been overruled, the appellant answered, (from pages 11 to 30 of record,) admitting that there is a ware-house on the lots described in the bill of complaint, and that said premises are of the value of $6,000; but, denying that the appellees then were or at any time had been the owners of that part of said lots and premises that lie and are south or east of the southerly or southeasterly line or lines of lots numbered one, of section five, in township twenty-eight, north of range twenty-two west, in the district of lands formerly subject to sale by the United States, at the Falls of St. Croix, Wisconsin, according to the survey thereof by the United States; and that the appellant had no knowledge whether the appellees owned the residue of said lots, that is to say, so much thereof as lies north or west of the said southerly or southeasterly line or lines of said lot one.

The answer admits that the Mississippi is a deep and navigable river, upon which a large commerce and trade are carried, but denies that the river flows immediately in front

of the lots claimed by appellees in the bill of complaint, but says that the river is at least 140 feet distant from the nearest part thereof. The answer admits and says that the river in front of the lots described in the bill, and for a short distance below and for 4,000 feet above the same is deep and navigable quite up to the banks, and that the banks in their present condition are well adapted and peculiarly favorable for the landing and mooring of steamboats, and for receiving and landing freight and passengers; but, that the said banks were by the appellant put in that condition in the construction of its railroad. The answer denies that the banks immediately in front of said premises, and for a short distance above and below have been used from the earliest times as a public landing for steamboats or other vessels; but avers that prior to the construction of said railroad said banks could not be used for such purposes; and that in its natural condition said bank was not fit or convenient for such purposes. The answer denies that said bank was graded for a landing by the city of St. Paul, but avers that in front of said premises and for 200 feet above or 200 feet below, the said bank was filled in, graded and put in their present suitable condition, as a landing, by appellant, in the construction of the railroad mentioned in the bill.

The answer denies that the said bank is the usual landing at the port of St. Paul, but avers that from Jackson to Chestnut streets, a distance of 3,750 feet within the said city, is dedicated, graded, and prepared as a levee, and that the same is above the termination of the railroad, and that the ordinary public landing at St. Paul is wholly above and beyond the terminus of the railroad, and that the bank in front of the premises described in the bill was not used, nor was it valuable to the public or to the appellees as a landing before the construction of the railroad, and that the whole value of that locality as and for a landing has been given to it by the construction of the road and the business done upon the cars.

The answer denies the obstruction of the street and landing, and denies that the land occupied by the railroad was ever dedicated as a public street and landing, and denies that it was ever maintained by the city of St. Paul for such purposes.

The answer denies the averments in the bill in relation to the approaches to the landing from other parts of the city, but avers that other streets than those mentioned lead to the landing, and avers that the appellant has done no act which interferes with the lawful and proper use of the public street, or landing by the public or by the appellee.

The answer denies that the appellee owns any part of the land in front of the premises described in the bill, but avers that the appellant is the owner thereof in fee, and was the owner thereof at the time of the location of the railroad.

The answer admits and says that the appellant is a corporation existing and doing business in the State of Minnesota, under the laws thereof, but denies all charges of unlawful and wrongful use and obstruction of any streets or public landing.

The answer avers that the land upon which the appellant has constructed its railroad, between Wacenta and Sibley streets, lies and is south and east of said southerly and southeasterly line of said lot No. one, of section five, in township twenty-eight, north of range twenty-two west, and that said land is and from a period prior to the construction of said road has been the sole property of the appellant, and that pursuant to the acts of Congress and the laws of the State of Minnesota the appellant has constructed its railroad thereon for the purposes mentioned in said acts and laws, and is running daily trains thereon for such purposes.

The answer denies all obstructions to the streets and landings by the appellant; or that any property of appellee has been depreciated in value, or impaired in its use by any act of appellant.

The answer avers that all the land in section 5, T. 28, R.

22, which is south and southeast of the south or south eastern line of lot one, in said section, was included in, and was a part of the land granted by the United States to the Territory of Minnesota, by the act entitled "an Act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of railroads in said Territory, and granting public lands in alternate sections, to the State of Alabama, to aid in the construction of a certain railroad in said State," approved March 3, 1857, and that appellant became the owner thereof by virtue of said act of Congress, and of the following acts of the Legislature of the Territory, and of the acts of the Legislature of the State of Minnesota, to wit: of May 22, 1857; August 12, 1858; March 6, 1860; March 8, 1861; March 16, 1862, and under a sale and purchase of the roads, lands, property, rights and franchises belonging or appertaining to the Minnesota and Pacific Railroad Company, made by the Governor of the said State of Minnesota, on the 23d day of June, 1860, in behalf of the State.

Answers are made to all the special interrogatories propounded in the bill.

General reply to the answer, pages 30 and 31.

The cause was submitted to the Court June 27, 1865, upon an agreed statement of facts, (pages 33 to 36,) and a perpetual injunction ordered by the Court, at the May term, 1866, from which decree the appeal was taken.

It was agreed, page 33-34, that in 1849, said lot, one in section 5, was surveyed and platted as a part of St. Paul; that the survey and plat of St. Paul included all of said lot one, and also extended beyond the meander line, and to the main channel of the Mississippi River. That lot ten in block twenty-nine mentioned in the bill is so designated upon said plat of St. Paul, and about one-half of said lot ten is south of the meander line which marks the south-eastern boundary of lot No. one in section 5, and about one-half of said lot ten is north of said meander line. Three plats were

by said agreement made evidence in the case. That marked "B" shews the survey of section 5, T. 29, made in 1847, approved in 1848. Plat marked "E" shows the survey of Island 11, containing 2.78 square acres, in front of lot No. one in section 5, and plat marked diagram "C" shows that part of St. Paul, including the premises described in the bill and answer exhibiting the north and west lines of lot one, in section 5; also the meander line thereof; also that part of lot ten in block twenty-nine which is north, and that part thereof which is south of said meander line; and exhibiting also the location of appellants railroad, on Wacenta and Sibley streets. The Town plat was certified by the proprietors including Lewis Roberts, in May, 1849, and was duly recorded; after which and before the construction of the railroad, the east half of said lot ten, in block twenty-nine came to be owned by the appellees in fee to the extent to which Lewis Roberts received title thereto from the United States, and to the extent of his right and power to convey the same and no further. It was further agreed that since 1854, the city of St. Paul has exercised municipal government, even the space designated on the plat as "landing," lying between the main channel of the river and said block twenty-nine, established a grade therefor and prior to 1856, caused considerable work to be done towards reducing the surface to such grade, that after such work had been done the appellant entered upon and constructed its road upon the land between block twenty-nine and the river, to be maintained without limit as to time; that in such construction the appellant raised the grade so that the top of the rails is thirty-four inches above the lower floor of said ware house, and the north rail is fifty feet and three inches from the front wall of said warehouse; that there are two tracks on the same level and the grade from the south track to the water is much steeper than the former grade, and the whole of the railroad works complained of in the bill is on Island No. 11, as ex-

hibited in the plat marked "E," and that said Island 11 is in said section 5.

Under the agreement the field notes of section 5, made in 1847. p. 36, 37 and 38, and of Island 11, made in 1856, p. 38 were in evidence, and also patent issued to Lewis Roberts, March 4, 1849, for lots 1 and 2 of said section 5, p. 37, and it was agreed that the recitals in said patent are true.

ARGUMENT.

If under his patent Lewis Roberts acquired and held beyond the meander boundary of lot 1, so as to include Island No. 11, and the intervening space, then by his dedication of a part thereof to the City of St. Paul, in 1849, for a public landing, levee and highway, his property in such part passed from him and vested in the City, and he cannot restrain any public use thereof which is agreeable to the City.

The Statutes of the Territory of Wisconsin were in force in the Territory of Minnesota in 1849, and provided that "When the plat or map shall have been made out and cer-"tified, acknowledged and recorded as required by this "Chapter, every donation or grant to the public, * * * "marked or noted as such on said plat or map, shall be "deemed in law and equity a sufficient conveyance to vest "the fee simple of all such parcel or parcels of land, as are "therein expressed, and shall be considered, to all intents "and purposes, a general warranty against such donor or "donors, their heirs and representatives, to the said donee "or donees, grantee or grantees, for his, her or their use, for "the uses and purposes therein named, expressed and in-"tended and no other use or purpose whatever; and the land "intended to be for streets, alleys, ways, commons, or other "public uses in any town or city, or addition thereto, shall "be held in the corporate name, in trust, to and for the uses "and purposes set forth and expressed or intended." Statutes of Territory of Wisconsin, 159; see also organic Act of Minnesota Territory, Statutes at Large, vol. 9, p. 407, sec. 12.

By the dedication the control passed from the proprietor to the City, and if there be any remedy for a disregard of the purpose of the dedication, it must be against the City.

During all the time of the construction of appellant's works

the City authorities had knowledge thereof, and because she did not object she is conclusively presumed to have acquiesced therein, for she cannot stand by whilst great public works are being constructed at enormous expense, connecting the commerce of the interior with the river, and after the expenditure has been made, and the improvements completed, then say that it is an obstruction to a public landing or highway.

But we are not driven to so extreme a position, for the improvements made upon these grounds, and the use made of them are consistent with the duties and obligations of the City under the donation thereof. She received the donation for a public highway, landing and levee; a place where the mingling trade and commerce of the country and the river might be conveniently carried on. The locality should be so improved, if possible, as to accommodate all the wants of commerce at that point; and if trains of cars bringing passengers and freight from a vast region of country, as well as drays and wagons are allowed to load and unload upon it, it will be a proper and judicious use of the property, and a faithful discharge of the trust.

The People et al. vs. Kerr et al. 27 N. Y. Rep. 188. Redfield on Railways, vol. 1, 260–261, Sec. 13. Philadelphia and Reading Railway vs. City of Philadelphia, 47 Penn. St. 325.

By the Act approved March 3d, 1857, Congress made a grant of lands to the Territory of Minnesota to aid in the construction of certain railroads therein mentioned, one of them being "from Stillwater by way of St. Paul and St. "Anthony to a point between the foot of Big Stone Lake "and the mouth of Sioux Wood River." Statutes at Large vol. 11, p. 195. That Act also provided for the transportation of the mails over the roads aided by the grant, and that "the said railroads and branches shall be and remain public highways for the use of the Government of the United States

free from toll or other charge upon the transportation of any property or troops of the United States." Section five being an odd number, and within the limits of the grant, passed thereby, to the extent that at the date thereof it was "not sold or otherwise disposed of" by the United States. By the Act of the Legislature of the Territory of Minnesota, of May 22d, 1857, entitled "an Act to execute the trust created by an Act of Congress, entitled "an Act making a grant of land to the Territory of Minnesota," &c., and by the Act of the Legislature of the State of Minnesota entitled "an Act to facilitate the construction of the Minnesota and Pacific Railroad, and to amend and continue the Act of incorporation relating thereto," approved March 10, 1862, the appellant became a corporation with full authority to construct the said railroad "from Stillwater by way of St. Paul and St. Anthony to a point between the foot of Big Stone Lake and the mouth of Sioux Wood River," and the said land grant in aid of that road became vested in the appellant.

By the seventh section of said act of May 22, 1857, it was provided that said railroad might be constructed "upon, "and along, across, over or under any public or private "highway, road, street, plank road or railroad if the same "shall be necessary."

Upon this statement of the law it is confidently claimed that the appellant had the lawful right to construct, and maintain its road over the grounds described in the bill, and answer, and that no nuisance, public or private, was caused thereby. The structure complained of was erected upon public grounds in the prosecution of an enterprize encouraged by Congress, and was expressly authorized by the Territorial and State Legislatures, and permitted and acquiesced in by the city authorities.

The right of way was also given over the public lands by Acts of August 4th, 1852, and March 3d, 1855, 10 U. S. Statutes, 28 and 683; and July 10th, 1862, U. S. Statutes at

Large, Vol. 12, 577. But without reference to the ownership of the soil, the State of Minnesota had the right to authorize the appellant to construct her public work over the land in question, Rex. vs. Smith, 1 Douglass, 425. Lansing vs. Smith, et al, 4 Wend, 1 Gould vs. Hudson River Railroad Co., 2 Selden, 522.

The appellant claimed the lawful right to construct, maintain and use its railroad upon the premises in question, upon two grounds, first, that it owned the land under the Congressional grant of 1857, and the Territorial and State transfers thereof, and possessed the authority to use the same in the prosecution of its enterprize; and second, if such claim were not good, then its structure was authorized by the Territorial and State laws upon the premises dedicated to the public as a landing, street, and highway. Until the validity of these claims of lawful right had been tested at law, and adjudged against the appellant, the owner of adjoining private property could not maintain proceedings for injunction, even though he sustained special loss and inconvenience. In Irwin vs. Dixon and Dixon 9, Howard 10, the complainants owned a warehouse fronting upon the Potomac, with windows and doors opening upon a public highway. The defendants obstructed the doors and windows by the erection of a high fence immediately in front. The defendant's claimed to own the property upon which the fence was erected, and therefore they had the right to maintain the same. The court says, "and when the right or title to the place in controversy, "or to do the act complained of, is, as, here, doubtful, and "explicitly denied in the answer, no permanent or perpet-"ual injunction will usually be granted till such trial at law "is had, settling the contested rights and interests of the "parties. * * * * The true distinction in this class of "cases is, that in a prospect of irremediable injury by what "is apparently a nuisance, a temporary or preliminary in-"junction may at once issue. But not a permanent or

" perpetual one till, the title, if disputed, is settled at law.' Many authorities are cited.

In this cause the appellant claims that at the date of the Congressional land grant, the lands in front of lot 1, Sec. 5, including Island 11, were undisposed of by the United States, and therefore have come to, and vested in appellant under that grant. If this claim be well made then the right to locate the railroads thereon is not questionable. This question involves the consideration of the extent of Lewis Roberts' acquisition under his patent dated March 4th, 1849, p. 37, of record. His patent was for lots 1 and 2 of section 5, " containing ten acres and sixty one hundreths of an acre, according to the official plat of the survey of said lands." As the patent gives no description of the premises except as lots 1 and 2 and the contents, reference must be had to the field notes and plat of the survey to ascertain the location and boundaries. The field notes and plats show that the line running 12.83 south from corner sections 5 and 6 intersects the bank of the Mississippi River, that the meander post was there set, " from which an elm 20 inches in diameter bears north 30½, east 169 links distance; elm 22 inches in diameter bears north 82½, west 161 links distance. Also, that at a point 16.90 east of said section corner the township line intersects the left bank of the Mississippi River, and that a meander post was set with bearing trees white, maple 48 inches in diameter bears west 11 links; white, maple 36 inches in diameter bears north 30, east 6 links distance. The meander line was run, beginning at last mentioned meander post " thence up stream south 61, west 6.50; " south 54, west 6.00; south 46, west 5.00; south 40, west " 3.96, to line of sections 5 and 6 at lower end of St. Paul." That line together with the township line at the north and the section line at the west constitutes the boundaries of lot 1 and the area by these lines described was paid for by Lewis Roberts in his purchase from the United

States. Did he take more than that area? The lines that marked and bounded his purchase are described by courses and distances, and also by natural and artificial monuments. The meander posts were upon the left bank of the river, and their location is fixed by the described bearing trees, The river is not a call in the survey, the survey does not extend to the river, but only to the post and described trees upon the bank. Lot 1 in its boundaries does not extend to the river, but only so near as the points where the township and section lines intersect the left bank as fixed by the posts.

In Dunlap et al. vs. Stetson, 4 Mason, 349, a boundary is described as "beginning at a stake and stones on the west bank of the Penobscot River, near a thorn bush, thence to a stake and stones on the same bank of said river, thence running on the western bank of said river to high water-mark, to the first mentioned bounds," was held to carry the land only to high watermark, and not to include the flats below.

In the survey before the Court, lot 1 is described as on the "east side or left bank" of the river, (see plat B,) and the position of the meander posts is established by witness trees, with the same care and certainty that govern the establishment of section corners.

The survey actually made is conclusive of the lands sold and patented. Bates vs. Illinois Central Railroad Company, 1 Black, 204.

1. "The land system of the United States was designed to provide in advance, with mathematical precision, the ascertainment of boundaries."

2. "The survey returned shall be held to be mathematically true as to the lines run and marked, the courses established and the contents returned."

3. ' Each section or separate sub-division of a section, is

independent of any other section in the township, and must be governed by its marked and established boundaries."

4. "The purchaser of land from the United States takes by metes and bounds, whether the actual quantity exceeds or falls short of the amount estimated by the surveyor."

5. "When a navigable stream intervenes in running the lines, the surveyor stops at that point, the fraction thus made is complete, and its contents can be ascertained." Seeven vs. Smith, 7 Porter, 428, (Alabama.)

In McCullough vs. Wainwright, 2 Penna., St. 171, the bank of a stream is defined to be "the continous margin where vegetation ceases, and the shore is the pebbly, sandy, or rocky space between that and low water-mark." Also 3 Sumner, 170. The lines marked on the ground constitute the actual survey and control; and in Pennsylvania it is held error to instruct the jury that land was included in the grant, which was outside the survey marked on the ground. Walker vs. Smith, 2 Penn., St. 43; Yankin vs. Cowan, 34 Penn., St. 198; Hall et al. vs. Tanner, 4 Penn., St. 244.

The boundary lines, including the meander line, not only described lot 1, but also fixed its contents, and upon that the price to be paid by Roberts was ascertained. He paid the price as so ascertained, and took that quantity of land. The officers had no authority to sell him land outside and not paid for, nor to give it to him. See the dissenting opinion of Wilson, C. J., in Middleton vs. Pritchard, 3 Scammon, 519, in which this view is ably maintained.

Island 11, and the space between it and the meander line of lot 1, were not in the survey, not estimated in the area, not regarded in the sum to be paid, neither paid for nor bought.

In Storer vs. Freeman, 6 Mass., 435, the Court in commenting upon the boundary "thence to the shore of the neck," thence by the shore, &c., says, "as it appears from the report of the judge that the shore mentioned in the

deed is not covered with rock, but forms a beach or flats, we shall for *shore* substitute *flats*. The land described will then extend to the flats, and be bounded by the flats. On this substitution the construction is manifest. The land conveyed extends to the flats, but not over them, and the flats being a bound of the land conveyed are not a part of it." In Hatch vs. Dwight et al., 17 Mass., 288, the bank being made a boundary the stream is excluded.

See also the ruling of this Court that the Virginia grant of the territory "northwest of the Ohio River," did not include any part of the river.

Should the Court not adopt this view, but hold that the grant to the meander line upon the bank, is a grant to the river, then the question arises whether the grant extends to the middle of the river and thus includes Island 11? It is submitted that the legislative history of the subject will not allow that position. Congress has not recognised as proper in this country, what is understood as the Common law doctrine in relation to navigable rivers.

The rectangular system of surveys was established by the Act of May 20, 1785, and disallowed a departure from it in any case except where the Indian boundaries might make its adoption impracticable. 1st Pub. Lands, Laws, Instructions and Opinions, 11.

The Act of May 17, 1796, providing for the survey and sale of the lands in the Territory north-west of the Ohio river, I. Stat. at Large, 490, required the same system "unless where the line of the late Indian purchase, or of "tracts of land heretofore surveyed and patented, or the "course of navigable rivers may render it impracticable."

1 Pub. Lands, Laws, Instructions and Opinions, 50.

The policy of omitting the navigable rivers from the surveys is clearly indicated. But Congress did not intend that in providing for the disposal of the lands in a great and important region of the country, it should be left to inference

only that the beds of the navigable rivers were no part of the public lands which were to be sold, and therefore in the 9th Sec. it was provided "that all navigable rivers within the territory to be disposed of by virtue of this Act shall be deemed to be and remain public highways." To make this, if possible, yet clearer, and to prescribe the rights of riparian proprietors upon streams not navigable, it was further provided in the same section, "that in all cases where the opposite banks of any stream, not navigable, shall belong to different persons, the stream, and the bed thereof shall become common to both." 1 Stat. at Large, 468. The words "navigable" and "not navigable," are not used in the supposed common law sense, but in the popular sense of their capacity to float vessels of commerce, because in the region over which the law extended there were no streams that could be influenced by the ebb and flow of the tide. In Russel vs. the Brig Empire State, 1 Newbury's Admiralty Reports, 551, Judge Wilkins commenting upon that section, says, "in making a distinction between the streams not and those navigable, where the opposite banks belong to different persons, and enacting that their beds shall belong and be common to both, clearly manifests the intention of the law making power to ordain all rivers actually navigable as common law rivers above the flow of the tide." To provide for the irregular or meander lines that would become necessary under the law, the first section authorized the Surveyor General "to frame regulations and instructions for the government of his deputies," and under like authority the Commissioner of the General Land Office has at all times instructed the deputies how and in what cases to run meander lines.

The provisions of the Act of May 17, 1796, and of February 11, 1805, have by divers other acts been extended to all of the public lands of the United States, and have thus become the foundation upon which our surveying system is reared. It will therefore be useful to consider the important

provisions of those acts more carefully. They provide that the public lands should be divided into townships and sections by lines running north and south and east and west, and that the lines and corners should be perpetuated by suitable monuments and marks upon the field, and that notes and plats of the surveys should be preserved, and that the lines and corners as run and established upon the field should be the boundaries of the townships and sections which they describe, and that the areas should be calculated upon the boundaries so fixed. A departure from rectangular surveys was allowed in three cases only—1st where an Indian purchase; 2d, a tract of land before surveyed or patented, and 3d, a navigable river rendered it impracticable. In these cases irregular surveys were allowed, because straight lines were "impracticable." Why impracticable? Because they could not be extended into an Indian purchase, a tract already surveyed, or patented, or into a navigable river. In each case they were alike and in the same sense impracticable. The lines must stop at the boundary of the Indian purchase, or the tract already surveyed or patented, and at the bank of the river. Thence the irregular lines must follow the boundary of the Indian purchase, or the bank of the river until north and south, or east and west lines again become practicable. It is not necessary in this case to consider the laws providing for the subdivision of sections. It is enough to say that their provisions are entirely consistent with the acts we are considering.

The result of these laws is that the lands of the United States, when offerred for sale to the people, are bounded by fixed mathematical lines, the evidence of which is perpetuated by monuments and marks upon the field, and in the public records; and when at any future time a Surveyor is called to survey a tract of land sold by the United States, the only question with him will be, where were the Government lines run.

Under these Acts, when a survey has been made and approved, it shall be held to be mathematically true in three respects: 1st, the lines run, and marked; 2d, the corners established, and, 3d, the contents returned.

The laws providing for the sale of the public land require their sale to be in accordance with the surveys so made. It thus results that the lands of the United States are conveyed "by fixed boundaries and artificial lines of measurement, and that an exact quantity of acres is sold by the acre, and never in gross."

The usage of the Executive Department has been in accordance with this construction, for the instructions of the General Land Office have required, and the universal practice of deputy surveyors, has been, to corner on the banks of all rivers actually navigable, and to "meander along the top of the same," and the purchasers of fractional sections are only charged for the true quantity of land included within the lines.

If the bank of a river be a call in a survey the grant does not go beyond the bank. Then if a mathematical line upon and along the bank, be a call, how can the grant go beyond it?

See an elaborate review of the surveying system of the United States, in connection with this subject, in Chapter 6, p. 85—Houck on Rivers.

In the Canal Appraisers vs. the People, 17 Wendell 570, on page 599, the court says: "In many cases also the "grants upon the borders of navigable streams have been "so limited as to confine the patentees to the bank of the "stream by the plain terms of the patent itself. Such is "the case, as I understand the testimony of the late Surveyor "General, in relation to all the grants for military bounty "lands which lie upon the borders of navigable rivers. He "says the patent itself only contains the number of the lot; "but that the survey and field notes in his office contain a

"particular description of the boundaries. That where such "lots are situated on the banks of navigable rivers, they are "bounded *on the banks* of such rivers or streams, and run "thence along the *bank* of such stream. This is a clear indi- "cation of the intention of the grantors, that the patent should "not include any part of the *alveus* of the stream or of the "Islands therein. It is therefore a *limited grant*; within the "meaning of that term as used by writers on the civil law, "and it cannot be extended to the thread of the stream, or "include any Island therein, even on the common law prin- "ciple, especially when we take into consideration the fact "that by the public law of the State the patentee was only "entitled to a certain number of acres."

1985 1211 Starr et al. vs. Child et al, 5 Denio, 599.
Haughton vs. Rascoe, 3 Hawks, (N. C.) 21.
Orenderff vs. Steel, 2 Barbour, (S. C.) 126.

The act of March 3, 1803, 2 Statutes at Large, 229 section 17, providing for the survey and disposal of the lands south of the State of Tennessee, and of March 26, 1804, 2 Statutes at Large, 277 section 6, for the disposal of the lands in the Indiana Territory, provided "that all navigable rivers," * * * * "Shall be deemed to be and remain public highways."

By the 3d. section of the Act April 18, 1814, 3 Statutes at Large 125, what is known as the military district in the State of Illinois was "reserved and set apart," to satisfy a certain class of claims, and one of the boundaries is thus described, "thence, west to the Mississippi River, thence down the same to the beginning." In a grant or reservation bounded by a stream not navigable, these words would carry it to the middle of the stream, but Congress held that they went only to the margin; for, at the next session by Act 27, February 1815, 3 Statutes at Large 218, in the 1st. section it was provided that the western boundary "be extended upon the river Mississippi to the middle thereof,

so as to include all Islands in said river between the middle and eastern margin throughout the length of said line."

The purpose that no part of the navigable rivers of the country shall be disposed of to individuals is further shown by the provisions of the Act of April 26, 1816, 3 Statutes at Large 308, providing for the sale of the tract of land at the lower rapids of Sandusky River, and of April 27, 1816, 3 Statutes at Large 319, providing for the sale of a tract of land at the British fort of the Miami of the Lakes, at the foot of the rapids.

In both cases a survey was to be made, and provision was made for the contents of tracts having "a front on the river" or "binding on the river," and it was further provided in each case that the subdivisional lines should not be run so as to extend to or embrace the bed of the river, which was declared a "public highway." It could not have been the purpose of Congress to make the rights of the purchasers for a short distance upon these unimportant streams exceptional, but the object was to prevent an exception, and therefore all doubt was removed by declaring the streams "public highways" or navigable.

The Act of April 24, 1820, 3 Stats. at Large, 566, authorizes the Secretary of the Treasury to prescribe rules and regulations for the subdivision of fractional sections. Under that power the General Land Office directs when and how irregular or meander lines shall be run.

By act of March 3, 1847, 9 Statutes at Large 691, Congress authorized the City of Dubuque to enter the Islands in the Mississippi River opposite said City, which were fractions in sections 19 and 30.

The lands upon the shore had then been entered, and if the proprietors held to the center of the river, the United States had no property in the Islands subject to her grant.

The City of Dubuque has improved the property, and now holds the same by herself or her grantees.

It is worthy of consideration that on the same day that Congress gave this Legislative construction of her policy and her grants, she authorized the sale of the lands in controversy in this case. See Act of March 3, 1847, creating Chippewa Land District, 9 Statutes at Large 179.

It cannot then be questioned that it has been the uniform legislative policy to withhold the navigable rivers of the country from private ownership and control.

The Executive decisions, and practice have been as uniform as has been the legislative policy, upon the subject.

The Commissioner of the General Land Office on the 30 June, 1868, made a decision in the matter of the application of Morgan H. Weir to locate certain scrip upon lands adjoining Lake Muskegon in the State of Michigan, in which he said.

"To the claim of the contestants that the land, if any "exists, belongs to the owners of the adjacent lots, upon the "common law doctrine that the proprietor of either bank of "an unnavigable stream owns to the middle thread of the "same or as usually expressed *ad medium filum aquae*, and "that the proprietor of both banks owns the bed of the river, "it may be replied that even at common law this maxim "never was of universal application, and as understood at the "present day operates only in giving construction to calls "in a grant or conveyance referring in general terms to a "river or stream as a boundary, and where the intention is "not clearly apparent to stop short of the middle of the "stream.

"In all such cases the riparian proprietor is presumed to "own to that line, or if his grant embraces both banks "to own the alveus or bed of the river itself. But it has "never been doubted that the owner may convey the bed of "the river to one person, and the adjoining banks to others. "Lord Chief Justice Hale in his treatise De Jure Maris, &c., "admits 'that one man may have the river, and others the

"soil adjacent,' and that 'the *prima facie* presumption of "ownership of the bed of the 'stream by the riparian pro- "prietor may be rebutted by evidence that the contrary "is the fact.'" * * * * * *

"The proprietor of adjoining lands 'who is also the pro- "prietor of the bed of a river may grant and convey the "bed of the river separate from the land which bounds it.' "see Angell on Water Courses, 4 and 5, Den. vs. Wright, "Peters, C. C. Rep., 64; Wright vs. Wilder, 2 Cush, 199; "Child vs. Starr, 4 Hill, 369. There are at least two clases "of cases, therefore, where the doctrine of ad filum aquae "cannot prevail.

"1st. Where by the terms of the grant it is evident that "another boundary was intended.

"2d. Where the grantor had no power to make a con- "veyance to the middle of the stream. The rule of the "common law may therefore be expressed in the language "of Chief Justice Wilson, in his separate opinion dissenting "from some of the conclusions of the majority of the Court "in the case of Middleton vs. Pritchard, 3 Scammon, 522. 'A "grant of land upon a river extends the title of the grantee "to the middle of the same, if the grantor has authority to "extend it so far, unless limited to another boundary by "express terms.'

"The right of a riparian owner to claim to the middle of "the stream is therefore merely *prima facie*, and may be re- "butted by showing that the calls in his conveyance limit "him to the bank or shore, or that his grantor had no power "to carry him further. * * * *

"Such being the language of text writers and the rulings "of the Courts, it would appear that the maxim, *a l filum* "*aquae* could have no application to sales of lands bounding "on meandered rivers, made by public officers under the "laws of the United States, because such sales are made ac- "cording to regulations prescribed by law and are expressly "limited to lands previourly surveyed and platted, and

"any attempt on the part of these officers to sell a single "acre of unsurveyed land would be void for want of "authority. The beds of meandered rivers and lakes are "not surveyed, and the power of the agents executing "sales of the adjacent lands, to carry purchasers to the "middle of the stream would seem to be clearly wanting.

"There can be no question that if the officers of the land "department were to attempt to sell the bed of any mean- "dered stream, the purchaser would acquire no legal title, "even although a patent might issue to him for the simple "reason that the law does not authorize such a sale.

"Now, if this cannot be done directly, for want of au- "thority in public officers, how can it be contended that it "may be done indirectly by a sale of the land adjoining, "when, according to all authorities, the doctrine of *ad filum* "invariably presupposes a power in the grantor to convey "to such boundary and that in the absence of such power "the rule has no application?" * * * * *

"Apply these principles to conveyances made by the Go- "vernment officers, executing a specific trust, limited to the "disposal of surveyed lands, after the same have been regu- "larly platted, numbered, and computed, described in the "patents as embraced between township range and subdi- "visional lines actually run by surveyors, and represented "on the official plats, and the idea of the title of the grantee "extending to the middle of a meandered and unsurveyed "stream would seem to be as effectually excluded as by any "verbal reservation that might be introduced into the in- "strument of conveyance.

"Lands bordering on meandered rivers are frequently "entered by actual settlers under the pre-emption and home- "stead laws, in which the maximum quantity that may be "taken by any one person is limited to 160 acres.

"Will it be contended that such claimants, after having "each selected and entered on the margin the full quantity

"allowed by law and applied for and obtained a patent for "the same, are entitled by some undefined process, to per- "haps, an additional 160 acres of unsurveyed land in the "bed of the river, in defiance of such statutory limitation "Such a construction would appear to give the rule a more "extensive application than it ever has heretofore received.

"Now, when lands bordering on a meandered and unsur- "veyed river, are described in a United States patent as the "southeast quarter of section eight, or as lot A in the south- "east quarter of fractional section 17, township 10, N. R. "sixteen (16) west, meridian of Michigan, it may be cer- "tainly claimed that 'the terms of the grant clearly denote "the intention to stop at the edge or margin of the river,' "for the reason that beyond the margin there are neither "sections, quarter sections, or fractional lots; these terms "being exclusively applicable to the subdivisions of the sur- "veyed land on either side of the stream, and we submit "that the doctrine of the common law, carrying the grantee "of the bank to the middle of the stream, can have no "proper and legitimate application to sales made by United "States officers, of lands bordering a meandered and un- "surveyed river, because all the authorities admit that no "such result follows where the terms of the grant clearly "denote the intention to stop at the edge or margin, or "where the grantor has no power to go beyond; both of "which circumstances combine in conveyances made by the "United States.

"No language could more emphatically denote the inten- "tion to stop at the margin or meandered line than that "used in Government patents for all the terms employed in "the description have reference only to premises surveyed, "platted, numbered and computed, and could not by any "rational construction be applied to the unsurveyed bed of a "river or lake. Nor could there well be a clearer case of "want of power to carry the grantee beyond the margin of "such a stream or body of water.

"So well established is the rule that United States officers "can make no sale or conveyance of land except in persu- "ance of statutory provisions, that the Supreme Court has "repeatedly decided that patents issued without such pre- "requisite authority are entirely void.—See Polk's Lessee "vs. Wendell, 9 Cranch 99. Stoddard, et al. vs. Chambers, "2 Howard, 284. Mills vs. Stoddard, et al., 8 Howard, 345. "United States vs. Stone, 2 Wallace, 525.

"As no law exists providing for the sale of unsurveyed "land, the authority to transfer the title to the bed of a me- "andered river is altogether wanting; and as such bed can- "not pass by a direct transfer, nor as incident or appurten- "ant to a grant of lands on the margin, it is difficult to "perceive by what principle of law the grantee of the bank "could hold to the middle of the stream." * * * * *

"The cases of Middleton vs. Pritchard, 3 Scammon, Illi- "nois Rep., 519, and Morgan & Harrison vs. Reading, 3 Sm. "and M. Miss. Rep., 366, in which it was decided that ripa- "rian proprietors on the Mississippi own to the middle of "that stream are not in harmony with the established prac- "tice of the Government, for ever since the organization of "the public land system, it has claimed and exercised "right of surveying and disposing of islands in the Mis- "sissippi and its navigable tributaries, and all other navi- "gable waters in the public land States and Territories of "sufficient size to justify the expense.—See Chief Justice "Wilson's separate opinion hereinbefore mentioned.

"Sometimes these islands have been disposed of with the "lands on the margin, but more frequently they have been "surveyed and sold long afterwards." * * * * * * * * * * * "The tendency of the latter decisions "however, appears to be that the common law rule is inap- "plicable to such large navigable rivers as the Mississippi, "and many of its tributaries, and the rulings of the Courts "are beginning to coincide more nearly with the decisions "and practice of the General Land Office."

In his report of 1867, the commissioner of the General Land Office elaborately reviewed the authorities, and the practice of the Government on this subject.

It has been the uniform practice to survey and sell the Islands in our great rivers, and in most cases, as the commissioner says, after the shore lands had been disposed of.

It is submitted that, upon this subject, the authority of the Legislative and Executive Department is very emphatic. and that in relation to lands sold under that provision of the Constitution which authorizes Congress to prescribe rules and regulations for the disposal of the public lands, that authority ought to be conclusive upon that judiciary.

But the attention of the Court is asked also to the judical decisions.

The English rule is not one of property, but a rule of evidence. In England as in the United States, public user for the purposes of commerce is the only conclusive test in the absence of legislative declaration.

In his work on the "Law of Waters," p. 42—edition 1851, Woolrych says. "The circumstance, therefore, of the flow and reflow of the tide is one of the strongest in support of a public right, but so far from being conclusive, we have mentioned a case in which such a test has been found to be fallible. Public user for the purpose of commerce is, consequently, the most convincing evidence of the existence of a navigable river and that fact being established, the accompanying rights of fishery and of ownership of soil, &c., are easily defined."

The Mayor of Lynn vs. Turner, 1 Cowper's, R. 86, was an action upon the case against the corporation for not repairing and cleansing a creek called Dowshill fleet "into which the tide of the sea was accustomed to flow and reflow as from *time immemorial* they had been used," whereby the creek was rendered unnavigable, and the plaintiff was obliged to carry his corn round about." Mr. Balwin conten-

ded that the *locus in quo* is a navigable river where the tide flows and reflows," and said: "For wherever a river flows and reflows it is in the nature of a highway and is common to all." Lord Mansfield interrupting him, said "*Ex facto oritur jus.* How does it appear that this is a navigable river? The flowing and reflowing of the tide does not make it so, for there are many places into which the tide flows, that are not navigable rivers, and the place in question may be a creek in their own private estate." The judgment was affirmed upon the allegation that the corporation was bound by prescription.

In the King vs. Montague et al. 4 Barn. & Cres. 598, the inquiry was important whether there had been "public navigation" upon Yantlet Creek, which united the Thames and the Medway. Bayley, J., after citing the case of the Mayor of Lynn vs. Turner, and the opinions of Gibbs, C. J., and Heath, J., in Miles vs. Rose, 5 Taunt 706, to the effect that the flowing of the tide is strong prima facie evidence of a creek being a public navigable river, said, "The strength of this prima facie evidence arising from the flux and reflux of the tide must depend upon the situation and nature of the channel. If it is a broad and deep channel calculated for the purposes of commerce, it would be natural to conclude that it has been a public navigation, but if it is a petty stream, navigable only at certain periods of the tide, and then only for a very short time, and by very small boats, it is difficult to suppose that it ever had been a public navigable channel."

Under the English rule then, the inquiry is, whether a stream is of sufficient width and depth for purposes of navigation, and has it been used for such purposes? And upon that inquiry the flow and reflow of the tide is strong affirmative evidence, but not conclusive. Houck on Rivers, Chap. 2, p. 10.

In the United States, so long as the settlements were con-

fined to the Atlantic coast, the rule of evidence was the same for the reason that in most cases the rivers were not navigable above tide water, but in respect to the great rivers west of the Alleghany Mountains, the rule, as one of evidence, is materially modified. There, as far as the tide ebbs and flows, the presumption remains that the streams are navigable, but above that point, the presumption that they are not navigable is at once overcome or excluded by the magnitude of many of the streams, their great breadth and depth, and their palpable capacity for navigation, and their constant and great use as novigable rivers.

The case of Jones vs. Soulard, 24 Howard 41, has by some been regarded as adverse to this view. This question was not necessarily considered, nor does it seem to have been considered by the Court in that case. The question was whether the municipal corporation of St. Louis, under the proceeedings of incorporation of 1809, and the boundaries as fixed, extended to the center of the Mississippi river, and it was so held. The title to the property in controversy necessarily followed the decision of that question, not because it was incident to any riparian rights, but because it was within the limits of the city, vacant and unclaimed, and therefore within the provisions of the grants made by the Acts of Congress of June 13, 1812, and January 27, 1831. Had the right to the property been dependent upon any riparian ownership, then it is probable it would not have been unclaimed, and would not have been the subject of Congressional grant, but would have belonged to the owner of the shore in front of which it lay.

Pennsylvania has uniformily rejected the common law rule as inapplicable to the great rivers of this country, and held that if navigable in fact, and their use necessary to the commerce of the country, they belong to the public, and cannot become private property. Carson vs. Blazer, et al., 2 Binney, 475; Shrunk vs. The President, Managers and

Company of the Schuylkill Navigation Company, 14 Sergeant and Rawle, 71.

Navigable streams and the beds which they occupy are public property, and the owner of land on navigable streams above tide water has title to ordinary low water mark, and not to the centre of the stream. Elder vs. Burrows, 6 Humphrey, (Tenn.,) 358. "Every water course in this State suited to the ordinary purposes of navigation, whether it ebbs and flows or not, (where the Government has not expressly granted any part of the bed thereof, or computed it in the quantity granted,) is a public highway," and no private right to the bed thereof can be asserted below the low water mark. Bulloch vs. Wilson, 2 Porter, (Alabama,) 436.

Navigable waters extend not only to low but embrace the soil to high water mark. Mayor and Aldermen of the city of Mobile vs. Eslava, 9 Porter, 577; Bowman's Devisees and Brunly vs. Wathen et al., 2 McLean, 376.

The protracted struggle over this question in New York, is now settled by the decision in the case of The People, ex rel., Loomis vs. The Canal Appraisers, 33 N. Y. Rep., 461. The reasoning of Davies, J., is so conclusive, and the authorities invoked by him are so weighty that, hereafter in that great State it will not be questioned that rivers navigable in fact, and important to commerce are public, and cannot become the subject of private right and private control, unless in the case of an unquestionable public grant.

The attention of the Court is asked to the great case of McManus vs. Carmichael, 3 Clark, (Iowa,) 1—of which a writer in one of our law periodicals has recently said: "This course undoubtedly surpasses, in breadth of view, depth of research, and philosophic treatment, any case thus far decided in this country bearing upon this subject. The opinion of Mr. Justice Woodward, is a monument of legal learning. The Court holds the Mississippi river a navigable stream, in the highest and broadest sense, giving to the va-

rious treaties and the surveying laws of the United States, due weight for the first time."

In Spooner vs. McConnell, et al., 1 McLean, 337, Justice McLean, in commenting upon the 9th section of the act of May 18, 1796, which declares that all navigable rivers shall be and remain public highways, says: "And all the surveys made on such rivers were bounded by them, and that the beds of the rivers were never included in the surveys nor sold to individuals."

In Bowman's Devisees and Brunley vs. Watham, et al., 2 McLean, the same learned judge says: "We apprehend that the common law doctrine, as to the navigableness of streams, can have no application in this country; and that the fact of navigableness does, in no respect, depend upon the ebb and flow of the tide."

In Woodman vs. Kilburn, et al., 6 American Law Reg., (N. S.,) 238, 241, Judge Miller, of the District Court of Wisconsin, said: "The Wisconsin is a meandered stream, according to the Government survey of the public lands. Although it is not navigable, in its unimproved condition, above the site of the dam, for steamboats navigating the Mississippi river, yet it is navigable in the common sense of the term. The soil in the bed of the river is not granted to riparian purchasers *usque ad filum*, but the body of the stream is reserved to the public."

At the common law the test of admiralty jurisdiction over rivers was the ebb and flow of the tide, but in this country that test has been discarded, and admiralty jurisdiction is held to extend to all rivers in fact navigable in the popular sense. The propeller Genesee Chief, &c., vs. Fitzhugh et al., 12 Howard, 443; The Hive vs. Trevor, 4 Wallace, 555. In England there are no rivers that are navigable in fact above the ebb and flow of the tide, and there tide water and navigable water are synonimous, and the presence or absence of tide water in the rivers decides the questions of navigability.

But, in the case of the Genesee Chief, the learned Chief-Justice said: "Now there is nothing in the ebb and flow of the tide that makes the waters peculiarily suitable for admiralty jurisdiction, nor anything in the absence of a tide that renders it unfit. If it is a public navigable water, in which commerce is carried on between different States or nations, the reason for the jurisdiction is precisely the same, and if a distinction is made on that account, it is merely arbitrary, without any foundation in reason; and, indeed, would seem to be inconsistent with it." Are these decisions and the reasoning upon which they rest not conclusive upon the question now before the Court? The convenience and necessities of commerce have established the rule in England that the navigable rivers shall not become the subject of private right, but shall be and remain common, free, and public. The attention of the Court is asked to an able discussion of the question and review of the American authori ties by a late writer, in chapter 3, p. 26, Houck on Rivers.

All the wants of commerce found upon the tidal rivers are also found upon the fresh water streams, provided their waters are sufficient to float its vessels. Perhaps it would not be an exaggeration to say that the commerce upon our rivers not tidal, is of far greater importance in its value, tonnage, and number of vessels and men employed, than was all the commerce of England at the time the salt water rule was first announced. The language of Chief-Justice Taney, above quoted, has its full force in this connection.

The shore, the bed and the flowing waters should be as as free from the embarrassments, incident to the assertion of private rights above as below the extreme points of tidal influence.

"The boundary of land covered by the water of the sea on tidal rivers is the line co-inciding with the average heighth of all ordinary tides, equinoctial as well as others, taken

throughout the year, excluding only extraordinary catastrophes or overflows."

Phear on rights of water, 41.

"It is, too, perhaps not free from doubt, whether the land covered by non-tidal rivers which are navigable, and by large fresh water lakes, does not by common law belong to the crown." Same, 18.

THOS. A. HENDRICKS,
Attorney.

5

Supreme Court of the United States.

ST. PAUL & PACIFIC RAILROAD COMPANY, APPELLANTS,

vs.

G. D. HUMPHREYS *et al.*

APPEAL FROM THE U. S. CIRCUIT COURT FOR THE DISTRICT OF MINNESOTA.

POINTS AND AUTHORITIES BY THE COUNSEL FOR THE RESPONDENTS.

I.

The respondent being the owner of the premises fronting on the public street and landing upon which the appellants had entered and were in the act of erecting their road-bed and track, without having first compensated said respondent or secured to him any compensation therefor, and without, indeed, having taken any steps whatever looking to such compensation, the respondent was entitled to his writ of injunction against the appellants, as prayed for and granted.

Constitution of Minnesota, art. 1, sec. 13; art. 10, sec. 4.

Constitution of the United States, amendments, art. 5.

Bonaparte *vs.* Camden and Amboy R. R. Co., 1 Baldwin C. C. R., 205, and cases there cited.

Bradshaw *vs.* Rogers, 20 Johns, 103.

Bloodgood *vs.* Mohawk and Hudson River R. R. Co., 18 Wend., 9.

Schurmeier *vs.* St. Paul & Pacific R. R. Co., 10 Minnesota R., 82.

In the case last cited, which is identical with the one at bar, the

court held that in any aspect of the case, Schurmeier, by his purchase of lots 11 and 12, as platted, acquired *at least an easement* in the landing, which could not be impaired for public use without compensation.

See Judge Berry's separate opinion, 10 Minn., p. 106.

II.

But the respondent's suit is mainly a suit to *abate a public nuisance*. The right of an individual, who is specially injured by a public nuisance—as the obstruction of the highway, or street, in front of his house or place of business, or other property—to an injunction at his own suit, is clearly established by the authorities.

Angell on Highways, p. 263, § 283, and cases there cited.
Angell on Watercourses, p. 631, § 571–2.
2 Story's Eq. Juris., secs. 920–9.
Angell on Highways, p. 199, *et seq.*
Angell on Watercourses, p. 616, *et seq.*
Soltau *vs.* De Held, 9 Eng. Law and Equity, 104.
Corning *vs.* Lowerre, 6 Johns, ch. 440.
Catlin *vs.* Valentine, 9 Paige, 575.
Schurmeier *vs.* St. P. & P. R. R. Co., 10 Minn. R., p. 99.

The obstructions complained of are a public nuisance, in that they permanently obstruct a public street and a public landing, and are wholly unauthorized.

They are in no sense *legalized* obstructions. There is nothing in the appellant's charter, nor any act of the legislature of Minnesota, nor in any act of Congress, which authorizes the appellants to erect or maintain these obstructions.

See act of Minnesota, approved 22d May, 1857, (appellant's (charter.)
Sess. Laws, Extra Session of 1857, p. 3. See sec. 7 of this act.
Schurmeier *vs.* St. Paul & Pacific R. R. Co., 10 Minn., 82.

In the case last cited, the supreme court of Minnesota, on precisely the same state of facts, specifically decide that this railroad company have no legal authority to obstruct the streets or this landing; and such obstruction being a special injury to the complainant in that case, he had a right to his writ of injunction against the company, and the same was accordingly awarded him.

But it is *not in the power* of the legislature of Minnesota, even if they were so disposed, to authorize these obstructions upon the public landing of a great national highway of commerce like the Mississippi river. The people of Wisconsin, Iowa, Illinois, Missouri, and other States of the Union, have just the same interests and rights in the freedom of the navigation of this river, and the unobstructed use of banks and public landings within this State, as the people of Minnesota. Any attempt, therefore, on the part of the people or the legislature of Minnesota, to the exclusive use and occupation of the banks and landing places of this river within the territorial jurisdiction of the State, would be wholly inadmissible. If the several States could each within its jurisdiction assume the exclusive use and occupancy of the banks of the great navigable streams flowing through their territory, or could grant such exclusive use and occupancy to others, there would be an end to the freedom of the navigation of these streams. In fact, they would no longer be *navigable* streams, as the acts of Congress explicitly declare that they shall be, and as the highest tribunal of the country has frequently adjudicated that they are.

Constitution of the United States, art. 4, sec. 2.

Ordinance of 1787, art. 4, last clause.

Act of Congress of 18th May, 1796, sec. 9, I Stat. at Large, 468.

Brightly's Dig., p. 500, § 232.

Russell *vs.* Brig Empire State, 1 Newberry, 544.

Genesee Chief, 12 How., 443.

It is therefore confidently submitted that in no aspect can the obstructions which it is found the appellants have put upon the public landing in front of the respondent's property ever be other than a public nuisance, and that therefore the respondent must at all times have the right to his remedy by injunction to remove these and all similar obstructions.

In this aspect of the case, it is wholly immaterial who owns the fee in this public landing, whether it be the appellants or the respondent. Whoever may be the owner of the fee, the ground itself is subject to the easement of a public landing on a navigable stream, and also that of a public street or highway. Any obstruction to the free use of such public landing and street, by whomsoever erected, is a *public nuisance*, and any individual specially damnified thereby may have the aid of a court of equity to abate the same.

The appellants' claim, therefore, to the ownership, whether equitable or legal, of the ground upon which they have entered and erected the obstructions complained of, will avail them nothing as a defence to the relief sought by the respondent.

III.

But the appellants are not the owners, nor in anywise entitled in the lands upon which they have entered.

The patent to Roberts, under whom the respondent claims, conveyed all the land bounded on the north by the east and west sectional line, and on the west by the north and south sectional line, and on the only other remaining side by the watercourse, that is, the Mississippi river. (See notes of survey and map.)

In the United States Government surveys the *boundaries* are the north and south, and east and west lines of the sections and townships, and in the case of fractions also the natural or exterior object which causes the fraction, as a watercourse, Indian territory, &c. The *monuments* are the section posts and quarter-section posts.

The "meander lines" are *not* boundaries. They are not even *known* to the laws or acts of Congress. The term "meander" is simply used to designate certain lines run by the surveyors along the windings of watercourses bounding fractions for the purpose of ascertaining and returning the quantity of land in such fractions.

The acts of Congress explicitly define "monuments," and provide where they shall be placed.

They are to be set down at the township, section and quarter-section *corners*.

And these acts provide that from these monuments *all lines* shall be run, *north or south*, and *east or west*, until other like monuments or their places shall be reached, or until some watercourse or other exterior object intervenes.

There is no provision whatever for meandering a watercourse, or running any line along its bank or the thread of its stream. But the *quantity* of land in a fraction must be returned; hence the surveyor runs lines along the bank of the watercourse to determine the quantity of land in the fraction.

Brightly's Dig., p. 466, sec. 41.
Brightly's Dig., p. 493, sec. 208.
Lester's Land Laws, p. 709.

If the surveyor make an error in his return as to the quantity of the land, or if the quantity is erroneously stated in the patent, this will not affect the grant. The grantee will take according to the *boundaries* of the land described. (Lindsey *vs.* Hawes, 2 Black, 554.)

The survey, including the maps, plats, field notes and certificates returned into the Land Office, and pursuant to which the grant is made by the patent, is a matter of record, and of equal dignity with and a part of the patent. (See case last above cited; also Bouv. Dict., vol. 2, p. 566, *term "survey," and authorities there cited.*)

The Government is *concluded* by the survey, according to which the grant is made. Any subsequent survey of the land by the Government made after the grant is void and without effect as to the grantee.

Lindsey *vs.* Hawes, 2 Black, 554.
Bates *vs.* Ill. Central R. R. Co., 1 Black, 204.

So any survey not made in pursuance of the acts of Congress is void. (Lessee of Brown *vs.* Clements, 3 Howard, 650.)

It is clear, therefore, that Roberts, under his patent, took all the land lying between the sectional lines and the Mississippi river; that his patent "calls" for the Mississippi river as one of the *boundaries* of his grant.

It is happily beyond question that a call for a river or watercourse as a boundary is a call for the *thread* of the stream or centre of the channel; and hence that such riparian proprietor owns to the thread of the stream, subject, however, to the easement of navigation by the public when the river or watercourse is navigable.

Boundaries, designated as "up" or "down" the river, or "along" the river, or "by" the river, mean the *thread* of the river or the centre of the channel. Boundaries running *to* the river, or to the bank of the river, run to the thread or centre of the channel of the river.

A river or watercourse, when used as a boundary, is used as an entirety.

Angell on Watercourses, chs. 1 and 13.
Middleton *vs.* Pritchard, 3 Scam., 510.
Ex parte Jennings, 6 Cowen, 518 and note, p. 536.
Gavit *vs.* Chambers, 3 Ohio, 496.
Newson *vs.* Pryor's Lessee, 7 Wheat., 7.

Jones *vs.* Soulard, 24 Howard, 63.

Bates *vs.* Ill. Central R. R. Co., 1 Black, 204.

3 Kent, p. 427, Lecture 52, Subdivision 2, (2) "Riparian Rights."

Schurmeier *vs.* St. P. & P. R. R. Co., 10 Minn. R., 82.

But the supreme court of the State of Minnesota in the case above cited, while holding the law in that State to be that a call for the Mississippi river as a boundary is a call for the middle thread of the stream, yet hold that the *locus in quo* ("Island No. 11") in this case lay above the *low-water* mark, and hence that it passed to Roberts, even though his grant extended no further than the low-water mark of the river.

The respondent therefore respectfully insists—

1st. That there *were no rights* in the *locus in quo* which the appellants could acquire under the land grant of Congress, the said premises having been, long prior to such grant, absolutely granted and conveyed to the respondent's grantor.

2d. That it is wholly immaterial for the purposes of this suit who is the party entitled in the *locus in quo*. It is sufficient that the same is a public street and public landing, and the acts and works of the defendants thereupon are a public nuisance, specially injurious to the plaintiff.

Judgment should be affirmed.

LORENZO ALLIS,
Of Counsel for Respondent.